BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

QWEST CORPORATION,

Complainant,

vs.

COX ARIZONA TELCOM, L.L.C.,

Respondent.

DOCKET NO. T-01051B-06-0045

DOCKET NO. T-03471A-06-0045

DECISION NO. 70664

OPINION AND ORDER

DATE OF HEARING:	July 17 and September 12, 13, and 18, 2006 (Phase I) April 25 and July 24, 2008 (Phase II)
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Dwight D. Nodes[1]
IN ATTENDANCE:	William A. Mundell, Commissioner Kristin K. Mayes, Commissioner
APPEARANCES:	Mr. Thomas W. Snyder, Stoel Rives, LLP, and Mr. Norman G. Curtright, Qwest Corporation Legal Department, on behalf of Qwest Corporation; Mr. David B. Rosenbaum, Osborn Maledon, P.A., and Mr. Michael W. Patten, Roshka DeWulf & Patten, PLC, on behalf of Cox Arizona Telcom, L.L.C.; and Ms. Maureen A. Scott, Senior Staff Counsel, Mr. Kevin Torrey, Staff Attorney, and Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Procedural Background

On January 30, 2006, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Complaint against Cox Arizona Telcom, L.L.C. ("Cox") for breach

[1] Assistant Chief Administrative Law Judge Dwight D. Nodes presided over all of the proceedings in this matter. The Recommended Opinion and Order was drafted by Administrative Law Judge Sarah N. Harpring.

of the parties' interconnection agreement ("ICA"). In the Complaint, Qwest alleged that Cox had repeatedly and continuously obtained unauthorized access to Qwest's network terminals and pedestals in multi-tenant environments ("MTEs") in Arizona and interconnected to Qwest's facilities without making appropriate payment.

Also on January 30, 2006, Qwest filed a Motion for Preliminary Relief, requesting an immediate preliminary order requiring Cox to comply with the terms of the Subloop Amendment to the ICA ("Subloop Amendment") and requesting a hearing within 20 days on its request for preliminary relief. Qwest also filed a Memorandum in Support of Motion for Preliminary Relief.

On February 7, 2006, Qwest filed a Request for Procedural Conference on an Expedited Basis stating that Qwest sought a hearing within 20 days and an expedited procedural conference to set a hearing date and procedural schedule.

On February 8, 2006, Cox filed a Response to Qwest's Request, stating that the Commission should allow Cox an opportunity to answer the Complaint before holding a procedural conference.

On February 9, 2006, a Procedural Order was issued scheduling a procedural conference for February 17, 2006.

On February 17, 2006, a procedural conference was held in this matter to discuss the health and safety issues asserted by Qwest in its Complaint. At the procedural conference, Qwest and Cox were directed to meet and discuss those issues, with Commission Utilities Division Staff ("Staff") participation; to file interim report/s within two weeks as to the resolution of those issues; to provide a status report as to the resolution of those issues at a procedural conference to be scheduled; and to begin considering hearing dates.

On February 28, 2006, a Procedural Order was issued memorializing the requirement for interim progress report/s to be filed by March 3, 2006.

On March 1, 2006, a telephonic procedural conference was held at which Cox's requests for suspension of formal discovery and of the deadline for its Answer were granted.

On March 3, 2006, Cox and Qwest filed a Joint Status Report in which they stated that (1) they were not aware of any specific imminent risks to public health and safety; (2) they had agreed on an audit process, to be completed within 12 months, to inspect and remedy problems at the MTEs at

which Cox provides service and Qwest may own inside or on-premises wire; (3) they had agreed upon the process that they would use on a going-forward basis; and (4) they had not yet reached agreement as to compensation. Qwest and Cox also reported that Cox had agreed to a formal training program for its engineering and field services personnel that would include written material, testing, and certification.

On March 31, 2006, Qwest filed another status report in which Qwest expressed doubt that a settlement would be reached with Cox and requested an immediate procedural conference to discuss scheduling a hearing.

On April 4, 2006, Cox filed a Response to Qwest's status report claiming that Qwest had violated Rule 408 of the Arizona Rules of Evidence by disclosing details of the parties' negotiations and had misrepresented the details of those discussions.

On April 5, 2006, Cox filed an Answer to Complaint.

On April 19, 2006, a Procedural Order was issued scheduling a procedural conference for May 1, 2006, and admitting Thomas W. Snyder *pro hac vice* in this matter.

On May 1, 2006, a procedural conference was held at which the parties reported that there had been a breakdown in negotiations regarding compensation to Qwest for Cox's prior access, as Cox had asserted that Qwest needed to provide documentation of its ownership of inside wire to justify its damages demand. Qwest requested that the matter be bifurcated to address the audit and compliance issues first and then deal with monetary compensation issues later, which would include addressing actual inside wire ownership and the rates that would be recovered for Cox's use of facilities owned by Qwest.

On May 5, 2006, Staff filed a Request for a Procedural Schedule in which Staff raised the issue of imposition of a fine against Cox. This was the first time that the issue of a fine had been raised expressly.

On May 12, 2006, Cox filed "Cox Arizona Telcom, LLC MTE Audit Plan" ("Cox Audit Plan"), which included provisions for audit team composition, audit team training, and the audit and remediation process.

On May 18, 2006, a Procedural Order was issued scheduling a hearing to commence on July

14, 2006, for Phase I of this matter and establishing related procedural requirements and deadlines. The Procedural Order established that Phase I would address the alleged improper access of terminals and subloops in MTEs and the performance of an audit to identify and remedy such situations and that Phase II would address inside wire ownership, the rates associated with inside wire ownership, and compliance with the ICA.

On June 2, 2006, Qwest filed an Emergency Motion for Order Requiring Cox to Preserve Evidence and Request for Immediate Oral Argument. Qwest argued that the order was necessary to ensure that evidence was preserved by Cox during its audit process.

On June 7, 2006, a Procedural Order was issued scheduling a procedural conference for June 15, 2006, for the purpose of taking oral argument regarding Qwest's Emergency Motion.

On June 9, 2006, the parties filed a Joint Motion to Reschedule Procedural Conference.

On June 13, 2006, a Procedural Order was issued rescheduling the procedural conference to June 21, 2006.

On June 21, 2006, a procedural conference was held. During the procedural conference, Cox was ordered, prospectively, to take at least one "before" and at least one "after" time-stamped digital photo sufficient to show the work done on each terminal during the audit process and to enter the photos in an appropriate format that would allow an independent third party to view the work done.

On July 7, 2006, Cox and Qwest contacted the Hearing Division telephonically to request modification of the hearing schedule. On the same day, Cox and Qwest filed a Notice of Modification of Phase I Hearing Schedule requesting that the hearing be rescheduled from July 14 to July 17, 2006, due to witness unavailability, and stating that Staff had agreed to the date change.

On July 10, 2006, a Procedural Order was issued rescheduling the Phase I hearing to July 17, 2006.

On July 17, 2006, the hearing was convened, but was continued due to the unexpected unavailability of the presiding Administrative Law Judge ("ALJ").

On July 24, 2006, a Procedural Order was issued scheduling the Phase I hearing to reconvene on September 12, 2006.

The Phase I hearing reconvened on September 12 and continued on September 13 and 18,

2006. Qwest, Cox, and Staff appeared through counsel and presented evidence and testimony. Phase I post-hearing briefs and reply briefs were filed by the parties on October 16 and 27, 2006. A Recommended Opinion and Order has not been issued regarding the Phase I issues.

On February 22, 2007, Qwest filed a Proposed Procedural Schedule for Phase II and Request for Issuance of a Phase I Order.

On March 1, 2007, Cox filed an Objection to Qwest's Proposed Procedural Schedule for Phase II and also submitted a sealed Motion to Compel Discovery. In its Objection, Cox argued that the Commission should first proceed with Phase III of the Qwest Unbundled Network Element ("UNE") Pricing Docket[2] to establish the non-recurring charges for access to Qwest's on-premises wire subloops, as those charges form the basis for Qwest's alleged damages in this matter. In the alternative, Cox included a proposed procedural schedule that would result in a two-week hearing in January 2008.

On March 12, 2007, Qwest filed a Reply in Support of Qwest's Proposed Procedural Schedule.

On March 15, 2007, Qwest filed a Notice of Extension of Time for Filing Response to Cox's Motion to Compel.

On March 22, 2007, Qwest submitted a Consolidated Response to Cox's Motion to Compel and Motion for Protective Order.

On March 27, 2007, a Procedural Order was issued scheduling a procedural conference for April 6, 2007.

On April 3, 2007, Staff filed a Motion to Compel and Motion for a Protective Order. Staff stated that Staff had been unable to obtain recent pleadings, such as Cox's Motion to Compel and Qwest's Response, because Staff had not signed a protective agreement acceptable to Qwest and Cox. Staff attached a proposed protective agreement that Staff desired to use to gain access to the pleadings designated confidential by Qwest and Cox. Also on April 3, 2007, Staff filed a Motion to Reschedule Procedural Conference due to the unavailability of key Staff personnel on April 6, 2007.

[2] This is Docket No. T00000A-00-0194, referenced elsewhere in this Decision as the Wholesale Pricing Docket.

On April 4, 2007, a telephonic procedural conference was held to discuss Staff's request to reschedule the procedural conference. The parties were directed to attempt to reach agreement with Staff regarding an appropriate protective agreement and/or to file a response to Staff's filing. The parties were also directed to further discuss possible hearing dates for Phase II as well as an agreed upon date for rescheduling the procedural conference after Staff's access to confidential documents was resolved.

On April 5, 2007, a Procedural Order was issued memorializing the discussion of April 4, 2007, and continuing indefinitely the procedural conference scheduled for April 6, 2007.

On April 23, 2007, the parties filed a Stipulation regarding Staff's Motion and attached an agreed upon Protective Order that they requested the ALJ to issue.

On April 25, 2007, Donald J. Friedman of the law firm Perkins Coie, LLP, filed a Motion and Consent of Local Counsel for *pro hac vice* admission in this matter on behalf of Qwest.

On May 31, 2007, a Procedural Order was issued granting Mr. Friedman admission *pro hac vice* in this matter.

On May 31, 2007, Qwest filed a Motion for Order Scheduling Procedural Conference to Set Procedural Schedule for Phase II. Qwest reported that the parties had engaged in discussions regarding a procedural schedule, but could not reach agreement.

On June 1, 2007, a Procedural Order was issued scheduling a procedural conference for June 18, 2007, to discuss scheduling and procedural issues.

On June 15, 2007, Cox filed a Response to Qwest's proposed procedural schedule, again arguing that the Commission should proceed with Phase III of the Qwest UNE Pricing Docket before proceeding with Phase II in this docket. In the alternative, Cox provided a proposed procedural schedule for Phase II, including a hearing in late February 2008.

On June 18, 2007, a procedural conference was held as scheduled. During the procedural conference, the parties agreed to a procedural schedule for Phase II, including a hearing date in late February 2008.

Also on June 18, 2007, a Procedural Order was issued scheduling the Phase II hearing to commence on February 25, 2008; requiring two rounds of prefiled testimony and one round of

prehearing briefs; and issuing a Protective Order to facilitate the disclosure of documents and information and protect confidential information during the course of the proceeding.

On October 25, 2007, Qwest and Cox filed a Joint Notice of Filing Settlement Agreement, including as attachments a "Confidential Settlement Agreement and Mutual Release—Arizona Complaint Proceeding" ("Settlement Agreement") and a "Settlement Agreement Concerning Subloop Arbitration Issues—Arizona" ("Subloop Arbitration Agreement"). The Settlement Agreement and Subloop Arbitration Agreement had both been executed on October 12 and 18, 2007. The Subloop Arbitration Agreement included, as its Exhibit A, a "Subloop Unbundling and Network Interface Device (NID) Amendment to the Interconnection Agreement between Qwest Corporation and Cox Arizona Telcom, LLC for the State of Arizona" ("New ICA Amendment"), which had been executed on October 12 and 17, 2007. Qwest and Cox stated that the Settlement Agreement resolved both the Phase I and Phase II issues in this matter. Qwest and Cox also stated that the Settlement Agreement is contingent upon Commission approval of the New ICA Amendment and conditioned upon the Commission's not making any material modifications to the Settlement Agreement. Qwest and Cox requested that the Commission not dismiss this matter, pending approval of the New ICA Amendment, and that all dates be held in abeyance.

On November 30, 2007, Qwest and Cox filed a Joint Motion to Dismiss, requesting that an order be entered dismissing this matter with prejudice, in accordance with the Settlement Agreement, as the New ICA Amendment had been filed on October 25, 2007, and had become effective pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1508.

On November 30, 2007, a Procedural Order was issued scheduling a procedural conference for December 10, 2007, to discuss the necessity of a hearing regarding the Settlement Agreement and any other procedural issues related to this matter.

On December 7, 2007, Donald J. Friedman, Steven J. Monde, and Samuel A. Thumma collectively filed a Motion for Withdrawal of Counsel on behalf of Qwest. The motion stated that Qwest had consented to the withdrawal and that Qwest would be represented by Norman Curtright and Thomas Snyder.

On December 10, 2007, a procedural conference was held as scheduled. During the

procedural conference, Staff expressed concern about issues that Staff felt were unresolved by the Settlement Agreement and also expressed displeasure that Qwest and Cox had filed the New ICA Amendment in the usual manner rather than submitting it to Staff for review, in light of this proceeding. At the conclusion of the procedural conference, Staff was directed to file, by February 1, 2008, a Staff Report regarding the Settlement Agreement.

On February 1, 2008, Staff filed a Staff Report in which it expressed concerns with various aspects of the Settlement Agreement and stated that it believed an evidentiary hearing was necessary to address questions regarding the Settlement Agreement. Staff did not mention in the Staff Report the imposition of a fine against Cox, although Staff did expressly question whether Cox had intentionally violated the ICA.

On February 8, 2008, a Procedural Order was issued scheduling a procedural conference for February 14, 2008, to discuss a procedural schedule and any other procedural issues related to this matter. The Procedural Order also granted Qwest Counsels' Motion for Withdrawal.

On February 11, 2008, Qwest and Cox each filed responses to the Staff Report. Qwest and Cox opposed Staff's request for additional hearing and requested that the Complaint be dismissed.

On February 14, 2008, a procedural conference was held as scheduled. During the procedural conference, Staff stated that it believed a hearing was needed to address various issues identified in the Staff Report. Qwest and Cox each reiterated that the issues raised in the Complaint had been resolved through the Settlement Agreement and that no further hearings were needed. It was ordered that a hearing would be held and that the hearing would be limited to the allegations in the Complaint and the reasonableness of the Settlement Agreement in addressing the allegations in the Complaint. Further, it was ordered that the New ICA Amendment's terms are not before the Commission in the context of this matter,[3] and the hearing and prefiled testimony schedule were announced.

On February 19, 2008, a Procedural Order was issued scheduling a hearing to commence on April 3, 2008, "to address the issues raised in Qwest's Complaint and the Settlement Agreement resolving those issues." The Procedural Order also established the deadlines for prefiled testimony.

[3] Staff had indicated a desire to attempt to demonstrate through its testimony or otherwise that the New ICA Amendment provisions were part of the Complaint.

On February 20, 2008, Staff filed a Motion to Consolidate Hearing on Settlement Agreements, stating that issues pertaining to the Arbitration Settlement Agreement would arise during the hearing on the Settlement Agreement, as the two Agreements are intertwined, and that the two matters thus should be consolidated for purposes of the hearing only. Staff also requested an expedited telephonic procedural conference for the purpose of addressing its Motion.

On February 22, 2008, Qwest and Cox each filed responses to Staff's Motion. Qwest and Cox each opposed Staff's Motion, contending that Staff's position had already been argued in the procedural conference of February 14, 2008, and rejected both in the procedural conference and the subsequent Procedural Order issued on February 19, 2008.

On February 29, 2008, Qwest filed the Direct Testimony of Rachel Torrence, Director of Qwest's Network Policy Group.

On March 3, 2008, Cox filed the Direct Testimony of Douglas Garrett, Vice President of Regulatory Affairs for the Western Region of Cox Communications, Inc. and an officer of Cox.

On March 14, 2008, Staff filed an Unopposed Motion for Modification of Procedural Schedule. Staff requested that the hearing date and the deadlines for filing Staff's Rebuttal Testimony and Qwest's and Cox's Surrebuttal Testimony be extended by three weeks.

On March 18, 2008, a Procedural Order was issued rescheduling the hearing to April 25, 2008; stating again that the purpose of the hearing was "to address the issues raised in Qwest's Complaint and the Settlement Agreement resolving those issues"; extending the filing deadlines for Staff's Rebuttal Testimony and Qwest's and Cox's Surrebuttal Testimony; and denying Staff's Motion to Consolidate.

On April 7, 2008, Staff filed the Rebuttal Testimony of Armando Fimbres, Public Utilities Analyst for Staff. In the recommendations put forth in his Rebuttal Testimony, Mr. Fimbres asserted that Cox should be fined a sufficient amount to deter future violations of the ICA and Commission orders.

On April 18, 2008, Qwest and Cox filed Surrebuttal Testimony.

On April 22, 2008, Qwest filed a Motion in Limine to Bar Testimony at April 25, 2008, Hearing Concerning Fines. In its Motion, Qwest stated that the issue of whether to impose a fine on

Cox was beyond the scope of the hearing as stated by the ALJ, because fining Cox was not an issue in the Complaint. Qwest stated that it should not be penalized by delaying implementation of the Settlement Agreement while the fine issue is considered, as the issue will be hard-fought by Cox and may delay the ultimate resolution of the Complaint, which is contrary to the public interest. Qwest also stated that if the issue of a fine is germane to the Commission, it should be considered in a separate proceeding.

On April 25, 2008, the hearing proceeded as scheduled at the Commission's offices in Phoenix, Arizona. Qwest, Cox, and Staff appeared through counsel; presented evidence; and participated in the questioning of Qwest witness Rachel Torrence. Before the testimony commenced, Qwest, Cox, and Staff engaged in extended argument concerning Qwest's Motion in Limine, which was denied. It was also ordered that the amount of payment to be made by Cox to Qwest under the Settlement Agreement be publicly revealed, which it was during the hearing, and that Staff reveal the range for the fine that it intended to recommend in its testimony, which was $80,000 to $4 million. Staff was directed to file written testimony regarding the fine amount recommended and the basis for the fine amount; additional hearing dates were scheduled for July 23 and 24, 2008; and deadlines were established for written direct and responsive testimony regarding the fine issue.

On May 9, 2008, Staff filed Supplemental Direct Testimony of Mr. Fimbres stating that Staff recommends a fine of $200,000 and explaining that Staff seeks the fine not to punish Cox, but to discourage Cox from future violations of Commission orders, rules, and regulations. Staff also explained how it had determined the amount of the fine.

On June 6, 2008, Cox filed Supplemental Rebuttal Testimony of Mr. Garrett.

On July 16, 2008, a Stipulation to Reschedule Hearing on Settlement was filed by Cox, Staff, and Qwest, requesting that the hearing dates be rescheduled to July 24 and 25, 2008.

On July 18, 2008, a Procedural Order was issued rescheduling the hearing to recommence on July 24, with July 25, 2008, as an additional hearing date if necessary.

On July 24, 2008, the hearing resumed at the Commission's offices in Phoenix, Arizona. Qwest, Cox, and Staff appeared through counsel. Cox and Staff presented testimony from Mr. Garrett and Mr. Fimbres, respectively, and presented exhibits. Qwest participated through cross-

examination. At the conclusion of the hearing, the parties were directed to file initial briefs by August 22 and reply briefs by September 5, 2008.

On August 14, 2008, Cox filed a Motion for a Brief Extension of Time to File Post-Hearing Briefing, requesting that the deadlines for initial and reply briefs be changed to September 2 and 16, 2008. Cox stated that Staff supported the Motion, but that Qwest opposed it.

On August 15, 2008, Qwest filed a Response in Opposition to Cox's Motion, asserting that Cox had not stated good cause for extending the briefing schedule and requesting that Cox's Motion be denied.

On August 15, 2008, a Procedural Order was issued granting Cox's Motion and requiring that initial briefs and reply briefs be filed by September 2 and 16, 2008, respectively.

On August 28, 2008, Staff filed an Unopposed Request for Extension of Time, requesting that the deadline for initial briefs be extended to September 5, 2008, and that the reply brief deadline remain unchanged. Staff asserted that both Qwest and Cox had consented to the extension request.

On September 2, 2008, a Procedural Order was issued granting Staff's Unopposed Request for Extension of Time and requiring that initial briefs be filed by September 5 and reply briefs by September 16, 2008.

On September 5, 2008, Cox and Qwest filed their post-hearing briefs.

On September 8, 2008, Staff filed its post-hearing brief.[4]

On September 16, 2008, Qwest, Cox, and Staff filed reply briefs.

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On June 20, 1997, Qwest and Cox filed with the Commission an ICA for Commission approval under the Telecommunications Act of 1996 and Arizona law. The ICA was approved by the Commission in Decision No. 60295 (July 2, 1997). The ICA included provisions that had been

[4] Staff explained in a Notice attached thereto that Staff had experienced computer problems late in the day on September 5, 2008, which had prevented Staff from filing its Brief with Docket Control that day.

arbitrated and provisions that had been voluntarily negotiated. The ICA did not include any provisions specifically related to subloop access in MTEs.

2. On July 2, 1997, in Decision No. 60285, the Commission granted Cox a CC&N to provide intrastate competitive local exchange telecommunications services in Arizona.

3. In April 2002, Qwest and Cox entered into a Subloop Amendment to their ICA. The Subloop Amendment was filed with the Commission on May 13, 2002, and went into effect through operation of law on August 11, 2002. The Subloop Amendment is composed of a document headed "Amendment for Subloop Unbundling between Cox Arizona Telcom, L.L.C. and Qwest Corporation" ("Subloop Amendment Main") and several attached documents, labeled Attachment 1, Exhibit A, Exhibit B, and Exhibit C.[5] The attached documents are incorporated by reference in the Subloop Amendment Main, which is the only portion of the Subloop Amendment executed by Cox and Qwest. The Subloop Amendment Main states the following on its first page, under "General":

> This Amendment is made in order to add the terms, conditions and rates for Subloop Unbundling, to the Agreement, as set forth in Attachment 1 and Exhibits A, B and C, attached hereto and incorporated herein.
>
> In executing this Amendment, Cox reserves the right to seek access to additional Subloop elements, such as On Premises Wire, Campus Wire or Inside Wire, through subsequent interconnection agreement amendments, in accordance with future decisions of the Arizona Corporation Commission concerning access to and rates for such additional Subloop elements, including without limitation decisions in Arizona Corporation Commission Docket No. T-00000-00-194.[6]

Attachment 1 to the Subloop Amendment includes provisions for Competitive Local Exchange Carrier ("CLEC") access to Subloop, including inside wire, and for CLEC access to MTE terminals.

4. Between receiving its CC&N in July 1997 and approximately September 2005, Cox accessed approximately 30,000 MTE terminals in approximately 5,200 MTEs in Arizona to provide service to tens of thousands of former Qwest customers. (*See* Ex. Qwest 1 at 13.) With each instance of access, Cox provided Qwest with notice for 911 purposes and, for most customers, with a separate

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[5] Attachment 1 contains the actual numbered ICA provisions. Exhibit A is a list of rates and states that if the Commission approves additional or different rates and/or rate structures at a later time as part of a generic cost proceeding, those rates shall become the rates established in the Subloop Amendment. Exhibit A also states that the parties agree that those rates and/or rate structures will be applied prospectively from the effective date of such a Commission order unless the order requires a true-up. Exhibit B sets out a "Special Request Process." Exhibit C provides Service Interval Tables.

[6] Ex. S-24 at 3 (Subloop Amendment Main at 1)(emphasis added).

notice for local number portability purposes. (Ex. Cox 2 at 9.)

5. In fall 2005, Qwest informed Cox, for the first time, that Qwest believed Cox was violating its ICA with Qwest by accessing terminals in MTEs. (*See id.*)

6. On January 30, 2006, Qwest filed with the Commission a Complaint against Cox for breach of the ICA, specifically the Subloop Amendment. In the Complaint, Qwest alleged that Cox had "repeatedly and continuously entered Qwest's network terminals and pedestals in Arizona, without notice to and authorization by Qwest, and wired or interconnected its facilities to Qwest facilities such as subloops, On-Premises Wire, and/or Intrabuilding Cable." Qwest alleged that Cox had not placed orders for the interconnection, had refused to pay for the use of Qwest's facilities, had caused physical damage to Qwest's network, had jeopardized plant safety, and had adversely affected service to some Qwest customers. Qwest alleged that this unauthorized access had occurred in the context of MTEs and that MTE units are typically served by subloops from common terminals or pedestals that connect the MTE units to Qwest's local telephone network. Qwest explained that the subloops from these terminals or pedestals are defined in Arizona as "two-wire subloops," "Intrabuilding Cable," or "On-Premises Wire" and that the lawful access to these subloops is known as "subloop unbundling." Qwest further explained that Qwest offers access to its subloops either through entry into an MTE terminal, which would typically be affixed to the wall or inside of an MTE building, or through entry into terminals detached from the MTE buildings and known as "Pedestals." Qwest asserted that neither of these methods of access was included in the ICA, but that they are addressed in the Subloop Amendment.

7. Also on January 30, 2006, Qwest filed a Motion for Preliminary Relief, requesting an immediate preliminary order requiring Cox to comply with the terms of the Subloop Amendment and requesting a hearing within 20 days on its request for preliminary relief. Qwest also filed a Memorandum in Support of Motion for Preliminary Relief.

8. On February 17, 2006, a procedural conference was held in this matter to discuss the health and safety issues asserted by Qwest in its Complaint. At the procedural conference, Qwest and Cox were directed to meet and discuss those issues with Staff, to file interim report/s within two weeks as to the resolution of those issues, to provide a status report as to the resolution of those issues

at a procedural conference to be scheduled, and to begin considering hearing dates.

9. On March 3, 2006, Cox and Qwest filed a Joint Status Report in which they stated that (1) they were not aware of any specific imminent risks to public health and safety; (2) they had agreed on an audit process, to be completed within 12 months, to inspect and remedy problems at the MTEs at which Cox provides service and Qwest may own inside or on-premises wire; (3) they had agreed upon the process that they would use on a going-forward basis; and (4) they had not yet reached agreement as to compensation. Qwest and Cox also reported that Cox had agreed to a formal training program for its engineering and field services personnel that would include written material, testing, and certification.

10. Cox began the audit process during the week of May 1, 2006. (Phase I Ex. Cox 1 at 7.)

11. On March 31, 2006, Qwest filed another status report in which Qwest expressed doubt that a settlement would be reached with Cox and requested an immediate procedural conference to discuss scheduling a hearing.

12. On April 4, 2006, Cox filed a Response to Qwest's status report claiming that Qwest had violated Rule 408 of the Arizona Rules of Evidence by disclosing details of the parties' negotiations and had misrepresented the details of those discussions. Cox reiterated that it intended to abide by the audit, training, and provisioning commitments made in the Joint Status Report. Cox further asserted that its audit had revealed a number of instances where Qwest technicians accessed Qwest terminals in the same manner that Qwest asserted to be improper; that many Qwest terminals were in disrepair; and that Qwest had, without permission, cut into Cox's underground conduit and used Cox-owned on-premises wiring at many MTE locations.

13. On April 5, 2006, Cox filed an Answer to Complaint, stating, among other things, that Cox has been serving customers in Arizona MTEs since approximately 1998; that Cox always provides notice to Qwest when Qwest customers switch to Cox; that Qwest has never asserted to Cox that Qwest owns inside wiring at any of the MTEs served by Cox; that Cox has never intended to connect at Qwest free-standing pedestals, only in MTE terminal boxes, and has agreed to remedy all installations made in Qwest free-standing pedestals contrary to Cox's policies and procedures; that

accessing a Qwest-owned subloop is not involved unless Qwest owns the inside wiring at an MTE building; and that the Subloop Amendment permits Cox to connect to MTE terminals without advance notice to or permission from Qwest. Among other things, Cox also asserted the affirmative defenses of waiver, estoppel, statute of limitations, laches, and unclean hands.

14. On May 1, 2006, a procedural conference was held at which the parties reported that there had been a breakdown in negotiations regarding compensation to Qwest for Cox's prior access, as Cox had asserted that Qwest needed to provide documentation of its ownership of inside wire to justify its damages demand. Qwest requested that the matter be bifurcated to address the audit and compliance issues first and then deal with monetary compensation issues later, which would include addressing actual inside wire ownership and the rates that would be recovered for Cox's use of facilities owned by Qwest.

15. On May 5, 2006, Staff filed a Request for a Procedural Schedule in which Staff raised the issue of imposition of a fine against Cox as one of the issues to be addressed in Phase II. This was the first time that the issue of a fine had been raised expressly.

16. On May 12, 2006, Cox filed "Cox Arizona Telcom, LLC MTE Audit Plan" ("Cox Audit Plan"), which included provisions for audit team composition, audit team training, and the audit and remediation process.

17. On May 18, 2006, a Procedural Order was issued scheduling a hearing to commence on July 14, 2006, for Phase I of this matter and establishing related procedural requirements and deadlines. The Procedural Order established that Phase I would address the alleged improper access of terminals and subloops in MTEs and the performance of an audit to identify and remedy such situations and that Phase II would address inside wire ownership, the rates associated with inside wire ownership, and compliance with the ICA.

18. On June 2, 2006, Qwest filed an Emergency Motion for Order Requiring Cox to Preserve Evidence and Request for Immediate Oral Argument. Qwest argued that the order was necessary to ensure that evidence was preserved by Cox during its audit process.

19. On June 21, 2006, a procedural conference was held. At the procedural conference, Qwest argued that Cox should be required to take "before and after" photos of each MTE terminal

inspected during the audit to preserve evidence; Cox argued that this would be overly burdensome and could not be justified by the benefit to be gained; and Staff supported requiring Cox to take the "before and after" photos as part of the audit process. Staff pointed out that Cox had unilaterally undertaken the audit process without benefit of a Commission order approving it. Cox argued that the costs of the photos should be assessed against Qwest if ultimately they were determined not to be necessary. During the procedural conference, Cox was ordered, prospectively, to take at least one "before" and at least one "after" time-stamped digital photo sufficient to show the work done on each terminal during the audit and to enter the photos in an appropriate format that would allow an independent third party to view the work done.

20. On July 17, 2006, the Phase I hearing was convened, but was continued due to the unexpected unavailability of the presiding ALJ.

21. The Phase I hearing was reconvened on September 12 and continued on September 13 and 18, 2006. Qwest, Cox, and Staff appeared through counsel and presented evidence and testimony. Phase I post-hearing briefs and reply briefs were filed by the parties on October 16 and 27, 2006. A Recommended Opinion and Order has not been issued regarding the Phase I issues.

22. On February 22, 2007, Qwest filed a Proposed Procedural Schedule for Phase II and Request for Issuance of a Phase I Order.

23. On March 1, 2007, Cox filed an Objection to Qwest's Proposed Procedural Schedule for Phase II and also submitted a sealed Motion to Compel Discovery. In its Objection, Cox argued that the Commission should first proceed with Phase III of the Qwest UNE Pricing Docket to establish the non-recurring charges for access to Qwest's on-premises wire subloops, as those charges form the basis for Qwest's alleged damages in this matter. In the alternative, Cox included a proposed procedural schedule that would result in a two-week hearing in January 2008.

24. On June 18, 2007, a procedural conference was held as scheduled. During the procedural conference, the parties agreed to a procedural schedule for Phase II, including a hearing date in late February 2008.

25. On June 18, 2007, a Procedural Order was issued scheduling the Phase II hearing to commence on February 25, 2008; requiring two rounds of prefiled testimony and one round of

prehearing briefs; and issuing a Protective Order to facilitate the disclosure of documents and information and protect confidential information during the course of the proceeding.

26. On October 25, 2007, Qwest and Cox filed a Joint Notice of Filing Settlement Agreement, including as attachments the Settlement Agreement and the Subloop Arbitration Agreement. The Settlement Agreement and Subloop Arbitration Agreement had both been executed on October 12 and 18, 2007. The Subloop Arbitration Agreement included, as its Exhibit A, the New ICA Amendment, which had been executed on October 12 and 17, 2007. Qwest and Cox stated that they had agreed to resolve the Phase I issues in this matter by agreeing to the Cox Audit Plan, pursuant to which Cox had already completed the inspection and remediation work, and had agreed to resolve the Phase II issues in this matter by agreeing to a confidential payment by Cox to Qwest, intended to cover payments that otherwise may have been due for Cox's historic use of certain facilities. Qwest and Cox stated that they had also resolved, in the Settlement Agreement, additional issues concerning Qwest's ability to use Cox-owned wire in MTEs. Qwest and Cox further stated that they had agreed, in the Subloop Arbitration Agreement, to terms and conditions going forward for Cox's access to Qwest's subloops and MTE terminals, including an advanced payment for future access. They explained that these terms and conditions were the subject of Issues 8 through 15 of an ICA arbitration currently pending before the Commission in another docket and that the New ICA Amendment had been filed with the Commission on October 25, 2007, for approval under 47 U.S.C. § 252 and A.A.C. R14-2-1508. Finally, Qwest and Cox explained that the Settlement Agreement is contingent upon Commission approval of the New ICA Amendment and conditioned upon the Commission's not making any material modifications to the Settlement Agreement. Qwest and Cox requested that the Commission not dismiss this matter at that time, pending approval of the New ICA Amendment, and that all dates be held in abeyance.

27. On November 30, 2007, Qwest and Cox filed a Joint Motion to Dismiss, requesting that an order be entered dismissing this matter with prejudice, in accordance with the Settlement Agreement, as the New ICA Amendment had been filed on October 25, 2007, and had become effective pursuant to A.A.C. R14-2-1508.

28. On November 30, 2007, a Procedural Order was issued scheduling a procedural

conference for December 10, 2007, to discuss the necessity of a hearing regarding the Settlement Agreement and any other procedural issues related to this matter.

29. On December 10, 2007, a procedural conference was held as scheduled. During the procedural conference, Staff expressed concern about issues that Staff did not feel were resolved by the Settlement Agreement and also expressed displeasure that the parties had filed the New ICA Amendment in the usual manner rather than submitting it to Staff for review, in light of this proceeding. At the conclusion of the procedural conference, Staff was directed to file, by February 1, 2008, a Staff Report regarding the Settlement Agreement.

30. On February 1, 2008, Staff filed a Staff Report in which it expressed concerns with various aspects of the Settlement Agreement and stated that it believed an evidentiary hearing was necessary to address questions regarding the Settlement Agreement. Staff did not mention in the Staff Report the imposition of a fine against Cox, although Staff did expressly question whether Cox had intentionally violated the ICA.

31. On February 11, 2008, Qwest and Cox each filed responses to the Staff Report. Qwest and Cox opposed Staff's request for additional hearing and requested that the Complaint be dismissed.

32. On February 14, 2008, a procedural conference was held as scheduled. During the procedural conference, Staff stated that it believed a hearing was needed to address various issues identified in the Staff Report. Qwest and Cox each reiterated that the issues raised in the Complaint had been resolved through the Settlement Agreement and that no further hearings were needed. At the procedural conference, it was ordered that a hearing would be held and that the hearing would be limited to the allegations in the Complaint and the reasonableness of the Settlement Agreement in addressing the allegations in the Complaint. Further, the ALJ stated that the New ICA Amendment's terms are not before the Commission in the context of this matter. The hearing and prefiled testimony schedule were announced.

33. On February 19, 2008, a Procedural Order was issued scheduling a hearing to commence on April 3, 2008, "to address the issues raised in Qwest's Complaint and the Settlement Agreement resolving those issues." The Procedural Order also established the deadlines for prefiled

testimony.

34. On February 20, 2008, Staff filed a Motion to Consolidate Hearing on Settlement Agreements, stating that issues pertaining to the Arbitration Settlement Agreement would arise during the hearing on the Settlement Agreement, as the two Agreements are intertwined, and that the two matters thus should be consolidated for purposes of the hearing only. Staff also requested an expedited telephonic procedural conference for the purpose of addressing its Motion.

35. On February 22, 2008, Qwest and Cox each filed responses to Staff's Motion. Qwest and Cox each opposed Staff's Motion, contending that Staff's position had already been argued in the procedural conference of February 14, 2008, and rejected both in the procedural conference and the subsequent Procedural Order issued on February 19, 2008.

36. On February 29, 2008, Qwest filed the Direct Testimony of Rachel Torrence, Director of Qwest's Network Policy Group.

37. On March 3, 2008, Cox filed the Direct Testimony of Douglas Garrett, Vice President of Regulatory Affairs for the Western Region of Cox Communications, Inc. and an officer of Cox.

38. On March 14, 2008, Staff filed an Unopposed Motion for Modification of Procedural Schedule. Staff requested that the hearing date and the deadlines for filing Staff's Rebuttal Testimony and Qwest's and Cox's Surrebuttal Testimony be extended by three weeks.

39. On March 18, 2008, a Procedural Order was issued rescheduling the hearing to April 25, 2008; stating again that the purpose of the hearing was "to address the issues raised in Qwest's Complaint and the Settlement Agreement resolving those issues"; extending the filing deadlines for Staff's Rebuttal Testimony and Qwest's and Cox's Surrebuttal Testimony; and denying Staff's Motion to Consolidate.

40. On April 7, 2008, Staff filed the Rebuttal Testimony of Armando Fimbres, Public Utilities Analyst for Staff. In the recommendations put forth in his Rebuttal Testimony, Mr. Fimbres asserted that "Cox was in violation of its ICA with Qwest and Commission orders and should be fined a sufficient amount to deter such conduct in the future." (Ex. S-25 at 7, 23.) Mr. Fimbres did not specify a fine amount. Mr. Fimbres also stated that Cox personnel were not even aware of the MTE Access Protocol until after the Complaint was filed. (*Id.* at 18.)

41. On April 18, 2008, Qwest and Cox filed Surrebuttal Testimony.

42. On April 22, 2008, Qwest filed a Motion in Limine to Bar Testimony at April 25, 2008, Hearing Concerning Fines. In its Motion, Qwest stated that the issue of whether to impose a fine on Cox was beyond the scope of the hearing as stated by the ALJ, because fining Cox was not an issue in the Complaint. Qwest stated that it should not be penalized by delaying implementation of the Settlement Agreement while the fine issue is considered, as the issue will be hard-fought by Cox and may delay the ultimate resolution of the Complaint, which is contrary to the public interest. Qwest stated that if the issue of a fine is germane to the Commission, it should be considered in a separate proceeding.

43. On April 25, 2008, the hearing proceeded as scheduled at the Commission's offices in Phoenix, Arizona. Qwest, Cox, and Staff appeared through counsel; presented evidence; and participated in the questioning of Qwest witness Rachel Torrence. Before the testimony commenced, the parties engaged in extended argument concerning Qwest's Motion in Limine, which was denied. (Tr. at 6-78.) It was also ordered that the amount of payment to be made by Cox to Qwest under the Settlement Agreement be publicly revealed, which it was during the hearing. (Tr. at 48, 83-84.) Staff was required to reveal the range for the fine that it intended to recommend in its testimony, which was $80,000 to $4 million, and directed to file written direct testimony regarding the fine amount recommended and the basis for the fine amount. (Tr. at 200-02.) Additional hearing dates were scheduled for July 23 and 24, 2008, and deadlines were established for written direct and responsive testimony regarding the fine issue.

44. On May 9, 2008, Staff filed Supplemental Direct Testimony of Mr. Fimbres stating that Staff recommends a fine of $200,000 and explaining that Staff seeks the fine not to punish Cox, but to discourage Cox from future violations of Commission orders, rules, and regulations. (Ex. S-26 at 4.) Further, Staff explained that the amount of the fine was determined by considering the $2.22 million that Cox agreed to pay Qwest, the amount Cox invested in conducting the audit ($1.4 million), and the manner in which Cox expedited the audit. (*Id.* at 5.) Staff had determined its initial range of $80,000 to $4 million, stated at hearing, based on 800 entries in the Audit Report in which Cox personnel had indicated that they removed a ground wire or a cross connect "from Qwest"; Staff

multiplied 800 by the range per offense authorized under A.R.S. § 40-425(A) ($100 to $5,000). (*Id.*) Staff also remarked that there was no active attempt by Cox to conceal its wrongdoing in this case, although Staff believes that its violations were willful and intentional. (*Id.*)

45. On June 6, 2008, Cox filed Supplemental Rebuttal Testimony of Mr. Garrett. Mr. Garrett stated that the 800 corrections noted in the Audit Report upon which Staff bases its fine recommendation "indicate actions taken by Cox to conform its connections to the agreed-upon standards for the audit." (Ex. Cox 4 at 4.) Mr. Garrett further stated:

> Cox made conforming modifications during the audit regardless of any determination as to who was responsible for the matter needing alteration and regardless of whether Qwest owned the MTE wiring so as to implicate the Subloop Amendment. Moreover, Mr. Fimbres has acknowledged that Cox was unaware of Qwest's MTE Access Protocol, which confirms that Cox could not have knowingly violated the protocol.

(*Id.* at 4-5.) Mr. Garrett further stated that no service outages were caused by Cox's connections at MTEs and that any damage alleged by Qwest had been remedied to Qwest's satisfaction during the audit. (*Id.* at 5-6.)

46. On July 16, 2008, a Stipulation to Reschedule Hearing on Settlement was filed by Cox, Staff, and Qwest, requesting that the hearing dates be rescheduled to July 24 and 25, 2008.

47. On July 18, 2008, a Procedural Order was issued rescheduling the hearing to recommence on July 24, with July 25, 2008, as an additional hearing date if necessary.

48. On July 24, 2008, the hearing resumed at the Commission's offices in Phoenix, Arizona. Qwest, Cox, and Staff appeared through counsel. Cox and Staff presented testimony from Mr. Garrett and Mr. Fimbres, respectively, and presented exhibits. Qwest participated through cross-examination. At the conclusion of the hearing, the parties were directed to file initial briefs by August 22 and reply briefs by September 5, 2008.

49. After extensions of time granted per Cox's request and Staff's request, Cox, Qwest, and Staff filed their post-hearing briefs on September 5 and 8, 2008, and their reply briefs on September 16, 2008.

The Proposed Settlement Agreement

50. A copy of the Settlement Agreement is attached hereto as Exhibit A and incorporated

herein by reference. The principal terms of the Settlement Agreement are as follows:

Section 1—Past Access and Use by Cox of Qwest-Owned Subloop at MTEs

Cox shall pay Qwest $2,220,000 within 10 days of the effective date of the Settlement Agreement. This payment compensates Qwest for claims and any and all damages associated with the issues alleged in the Complaint proceeding and is also in lieu of any and all non-recurring charges and monthly recurring charges for Cox's use of Qwest's terminals and subloop, including On-Premises Wire, in MTEs in Arizona from the beginning of time up to and including the Settlement Agreement's effective date.

Section 2—Inspection and Repair Plan

In further settlement of Qwest's claims alleged in this proceeding, Cox has undertaken the inspection and remediation work outlined in the Cox Audit Plan and the additional tasks agreed to by Cox during Phase I, including taking "before" and "after" photos of each terminal inspected and posting the photos and inspection and remediation data on a non-public website available to Qwest.

Section 3—Dismissal of Complaint Proceeding

Within 7 days after the New ICA Amendment becomes effective pursuant to A.A.C. R14-2-1508, Qwest and Cox shall move for a stipulated dismissal of this proceeding with prejudice, with each side to bear its own costs and attorney fees.

Section 4—Qwest's Use of Cox Affiliate-Owned Telephone Wire at MTEs

As additional consideration for the Settlement Agreement, Qwest may use to serve Qwest customers, free of charge, for five years following the effective date of the Settlement Agreement, Cox affiliate-owned on-premises terminals and telephone wire in MTEs in Arizona. Telephone wire does not include coaxial cable and fiber optic cable. Qwest's connections shall be made in accordance with the terms of version 1.1 of the MTE Access Protocol. If Qwest continues to serve MTE customers using Cox affiliate-owned on-premises terminals and telephone wire after five years, Qwest and Cox shall negotiate for payments based on the number of connections and appropriate rates.

Section 5—Releases and Covenant Not to Sue

Except with respect to the obligations expressly set forth in the Settlement Agreement, Qwest

and Cox covenant not to sue and release and forever discharge each other from all actions, claims, etc., for acts or omissions occurring between the beginning of time and the effective date of the Settlement Agreement and arising out of or relating to the issues associated with any claim that either of them may have in connection with the matters raised in this proceeding, including but not limited to claims for property damage, damage to business or reputation, nonpayment of recurring or nonrecurring charges for use of wires and other property, and for Cox's inspection and remediation of Qwest-owned facilities conducted as part of this proceeding. Qwest and Cox expressly acknowledge that they may have claims against one another not arising out of or related to this proceeding and that these claims are not affected by the Settlement Agreement. Qwest and Cox agree to take all necessary actions to ensure that no other person within their direct or indirect control asserts or commences any action, proceeding, or claim that is released in the Settlement Agreement.

Section 6—Confidentiality

Qwest and Cox agree to keep the monetary terms of the Settlement Agreement confidential and not to disclose it to unaffiliated third parties except as provided in Section 7.[7]

Section 7—Submission of the Agreement to ACC

Qwest and Cox agree to file with the Commission, within 7 days after the last date of execution of the Settlement Agreement, a public redacted copy of the Settlement Agreement and, under the Protective Order issued June 18, 2007, a Confidential un-redacted copy of the Settlement Agreement.

Section 8—Effective Date

The Settlement Agreement's effective date is the date on which this proceeding is dismissed with prejudice, which cannot occur until after the New ICA Amendment becomes effective under A.A.C. R14-2-1508. The Settlement Agreement "is contingent on the [Commission's] not making any material modifications to the terms of th[e] Agreement or the terms of the [New ICA] Amendment."

. . .

[7] The amount of the payment to Qwest under the Settlement Agreement, $2,220,000, was disclosed at hearing pursuant to the ALJ's ruling.

Sections 9 through 17

Sections 9 through 17 of the Settlement Agreement are standard contract provisions addressing governing law, no admission of liability, entire agreement, modification or waiver, cooperation in implementation, interpretation, dispute resolution, counterparts, and effect and authority.

Staff's Position[8]

51. Staff's position is that the Settlement Agreement is not in the public interest without the modifications proposed by Staff, as the Settlement Agreement addresses only the business interests of Qwest and Cox and not the public interest. Staff asserts that Cox intentionally violated its ICA with Qwest as well as Commission orders that established procedures and set rates for use of Qwest's network and that a fine of $200,000 is warranted.

52. Staff states that it supports settlement of cases, especially formal complaint cases between providers, when settlement aids the Commission in carrying out its public interest obligations, such as when the subject matter of a dispute demands technical proficiency that the Commission does not have to the same extent as the parties, or when the parties' private interests are aligned with the long-term public interest. Staff asserts that the Settlement Agreement in this case does not satisfy these criteria, because it "does not go far enough," as it does not address "a lot of important issues that were raised in this proceeding." Staff's states its position as follows:

> [The] Settlement Agreement only resolves the issues between Qwest and Cox. It does not address one of the most important issues in this case, which is Cox's intentional violation of the Parties' ICA and Commission orders. Carriers should expect or know that when they violate Commission orders, rules, or obligations arising from Commission proceedings which are subsequently incorporated into agreements, such as an ICA, that they will be held accountable for such violations. Indeed, the Commission has in many cases imposed fines upon public service corporations when violations of its orders or rules have been demonstrated. . . . Cox should not be the exception. Cox currently is the subject of two major formal complaint proceedings which have taken a lot of Commission time and resources. In both proceedings, Cox refuses to acknowledge any wrongdoing and suggests that it is being subject[ed] to unfair treatment. What would be unfair in Staff's opinion, is a situation

[8] Although the Complaint in this case was not filed by Staff, Staff's position is presented first because Staff has essentially placed itself into the position of Complainant as the proponent of imposition of a fine. In addition, Staff is the only party opposed to dismissal of this matter without further action, and thus it is Staff's position to which Qwest and Cox react in stating their own positions.

where Cox is allowed to violate Commission rules and orders without the same repercussions that other public service corporations face.[9]

53. Staff further states that the Settlement Agreement addresses only Cox's past access and use of Qwest's subloops at MTEs and Qwest's damage claims therefrom, not future use, which is addressed in the Arbitration Settlement Agreement filed in the Arbitration matter,[10] in which Staff is not an active participant, and the New ICA Amendment. Staff notes that neither the Settlement Agreement in this matter nor the Arbitration Settlement Agreement will become effective until this matter is dismissed.

54. Staff proposes the following "modifications" to the Settlement Agreement:

1. Qwest and Cox should disclose the confidential lump-sum settlement amount;[11]

2. Qwest and Cox should demonstrate and attest that public health and safety concerns raised by Qwest have been resolved;

3. Cox should file with the Commission, as a compliance filing, by April 15 of each year for the next five years, an attestation that all employees performing work at MTEs have been trained in proper MTE interconnection procedures;

4. Qwest and Cox should include the Cox Audit Plan as an attachment to the Settlement Agreement;

5. Qwest and Cox should jointly perform a random audit of 20 MTE terminals approximately one year from the effective date of the Commission's Order in this matter to ensure that Cox field personnel are continuing to comply with the requirements of the ICA Amendment; and

6. Cox should be fined a sufficient amount to deter future violations of its ICA with Qwest and Commission Orders.

55. Staff acknowledges that Item 1 is no longer an issue, as the amount of the payment was released at hearing.

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[9] Staff's Initial Post-Hearing Brief at 5-6.

[10] Staff adds that the Arbitration Settlement Agreement should be reviewed in the Arbitration docket to ensure that the allegations underlying the Complaint are appropriately addressed for the future.

[11] *See* note 7, *supra*.

56. Staff states that Item 2 is needed because Qwest raised serious concerns regarding public health and safety related to damaged and improper connections made by Cox. Staff also states that the requirement is not at all burdensome and is not addressed at all in the Settlement Agreement.

57. Staff states that Item 3 is important because many of the violations alleged by Qwest that were ultimately found to exist derived to a large degree from Cox's inadequate training of its telecommunications field personnel. Staff also states that the requirement is not burdensome and is not addressed at all in the Settlement Agreement.

58. Regarding Item 4, Staff states that the Cox Audit Plan contains ongoing requirements of which Cox field personnel should be aware and with which they should comply. Staff states that attaching a copy of the Cox Audit Plan to the Settlement Agreement will ensure that Cox regulatory personnel remain aware of the Cox Audit Plan's requirements and is appropriate because the Settlement Agreement actually refers to the Cox Audit Plan.

59. Regarding Item 5, Staff believes that it is "critical" because it will help to ensure that Cox field personnel continue to comply with national safety codes, the New ICA Amendment, and the MTE Access Protocol. Staff believes that checking 20 random locations is appropriate because it will not impose a significant burden on either Qwest or Cox and yet should provide an accurate representation of Cox's continued compliance with the MTE Access Protocol.

60. Regarding Item 6, Staff asserts that the evidence without question demonstrates that Cox violated Commission orders or requirements and the terms of the ICA and thus should be subjected to a sizable fine. Staff quotes Section 9.3.5.4.1 of the Subloop Amendment, which requires a CLEC to notify its Qwest account manager in writing of the CLEC's intention to provide access to customers residing within an MTE and then allows Qwest either two business days or 10 calendar days, depending on the circumstances, to notify the CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. Staff states that Cox has admitted that it never provided Qwest written notice as required under Section 9.3.5.4.1, although Cox has entered approximately 5,200 MTEs and 30,000 terminals to provide service.

61. Staff states that Cox also violated the underlying Commission orders in both the

Section 271 Proceeding[12] and the Wholesale Pricing Docket,[13] because Cox was an active party in both of those dockets, and the Commission's orders in those proceedings required parties to follow the procedures adopted therein and established the pricing for MTE terminal and subloop access. Staff states that Cox should have notified Qwest of the need for an ICA Subloop Amendment before it entered a single MTE terminal after those Commission orders had issued. Staff also states that there is no evidence that Cox ever complied with the MTE Access Protocol incorporated by reference into the Subloop Amendment. Staff points out that Cox personnel admitted that they were not aware of the MTE Access Protocol until after the Complaint was filed.

62. According to Staff, Cox's post-audit report showing that Cox took 9,000 corrective actions at 5,200 MTEs and 30,000 terminals in both the Phoenix and Tucson areas is evidence of the extent of Cox's noncompliance with the MTE Access Protocol. According to Staff, the post-audit report shows that during the audit, Cox installed more than 2,000 cross-connect blocks; removed more than 5,000 pigtails; sealed or resealed more than 6,000 holes; and took more than 9,000 actions that involved something being connected, hooked, pulled, rerouted, covered, installed, relocated, reworked, drilled, mounted, removed, sealed, grounded, moved, replaced, or taped.

63. Staff states that, contrary to Cox witness testimony, Cox's actions were intentional. Staff characterizes Cox's witness testimony as incredible, largely because Cox actively participated in the Section 271 Proceeding and Wholesale Pricing Docket, "in which many of these procedures, processes, requirements and rates were adopted by the Commission." Staff believes that Cox's assertion that it was unaware of the requirements adopted by the Commission in those dockets "strains credibility." Staff states that Cox's witness openly admitted that Cox had been accessing terminals for more than eight years. Staff also states that the Commission order in the Section 271 Proceeding was entered on June 5, 2002; that the order in the Wholesale Pricing Docket was entered on June 12, 2002; and that the Subloop Amendment was signed on April 16, 2002. Staff states:

> It is simply difficult to understand how Cox would be "unaware" of its obligations given its financial interest, involvement and participation in all of these dockets and its having subsequently signed a contract with Qwest which once again obligated it to follow these procedures and pay the

[12] This was Docket No. T-00000A-97-0238.
[13] This was Docket No. T-00000A-00-0194.

specified Commission approved rates for use of Qwest's subloops.[14]

Staff states that the only logical conclusion when faced with "the overwhelming evidence" in this docket is that "Cox's actions were knowing and intentional."

64. Staff also states that Cox has raised many defenses in this case, none of which are persuasive. Staff states: "It is difficult to understand why Cox would agree to expend $1.4 Million on an audit and remediation work and pay another $2.2 Million to Qwest, if no wrongdoing had occurred or been proven in this case." Staff states that the overwhelming evidence in this case establishes that Cox violated Commission orders and requirements and its Subloop Amendment with Qwest for a number of years. Staff is not persuaded by Cox's statements that Cox did not comply with the requirements for MTE access because Cox was unaware of the MTE Access Protocol until after the Complaint was filed or that Cox did not comply with the Subloop Amendment because Cox was unaware that the Subloop Amendment applied to developments other than the Paradise Lakes development that caused Cox to enter into the Subloop Amendment. Staff characterizes Cox's position regarding the Subloop Amendment as a "post hoc rationalization."

65. According to Staff, Cox's other major defense is that it cannot be held accountable for its actions because the Commission cannot prove that Qwest owned any of the facilities at issue. Staff states that the dilemma is of Cox's own making because Cox failed to provide Qwest notice as required under the Subloop Amendment, which notice would have resulted in Qwest's being obligated to establish ownership. Staff states that Cox should not be permitted to benefit from this wrongful action and that Cox's argument that it provided notice with every order through the 911 and number porting processes should be rejected.

66. Staff states that as part of the process of obtaining a CC&N to provide telecommunications service in Arizona, Cox agreed to comply with all Commission orders, rules, regulations, and requirements. Staff states that Cox's noncompliance with the Commission orders and requirements in this case caused Staff to question whether Cox had failed to devote sufficient managerial and technical capabilities to offer telecommunications services in Arizona or whether Cox's actions were intentional. Staff believes that the evidence all points to Cox's actions having

[14] Staff's Initial Post-Hearing Brief at 16.

been intentional. Staff also states that the existence of another "very significant complaint" against Cox in another docket causes Staff to question "whether this is evidence of a pattern on Cox's part of intentional noncompliance with Commission Orders, rules and regulations." Staff states that only a fine will provide Cox an incentive to change its future behavior.

67. Regarding Cox's argument that it was not provided notice of Staff's intent to seek a fine in this case, Staff points out that a fine was actually mentioned initially in Staff's May 5, 2006, Request for a Procedural Schedule. Thus, Staff states, Cox was on notice almost at the inception of the case that a fine was likely to be recommended by Staff, and the Commission should reject Cox's claim that it was given inadequate notice and/or an inadequate opportunity to respond to a fine recommendation.

68. Staff also explains that Staff's $200,000 fine recommendation was determined after Staff established a possible fine range of $80,000 to $4 million by multiplying the number of occurrences of Cox tampering with or rearranging Qwest's network (conservatively estimated to be 800) times the fine range per offense allowed by A.R.S. § 40-425 ($100 to $5,000 per offense). Staff states that the ultimate fine recommended was determined after considering the $2.22 million payment to Qwest, the $1.4 million Cox spent on the audit, and the manner in which Cox expedited the audit. Staff states that a fine should be imposed to discourage Cox from future violations of Commission orders, rules, and regulations, not to be punitive. Staff further states:

> Parties to complaint proceedings should not have the ability to simply achieve dismissal when violations of Commission rules and orders are alleged. The record evidence in this case supports the imposition of a fine on Cox for intentional violation of Commission orders, rules and requirements. The evidence also establishes that the Settlement Agreement is in the public interest with the modifications proposed by Staff.[15]

69. In its Reply Brief, Staff asserts that Cox has been provided notice and an opportunity to be heard regarding the potential imposition of a fine and that its due process rights would not be violated in any way if the Commission were to impose a fine. Staff also reiterates that Cox's alleged belief that it had no obligations under the Subloop Amendment was not reasonable, as Cox had

[15] Staff's Initial Post-Hearing Brief at 20.

actively participated in both dockets[16] leading up to the requirements of the Subloop Amendment and the recurring charges for use of Qwest's subloops. Staff also takes issue with Cox's arguments that Qwest never said anything to Cox although Qwest knew that Cox was making connections at terminals where Qwest had wiring and that Qwest never implemented procedures for making ownership inquiries and placing orders under the Subloop Amendment. Staff states that Qwest's failure to say anything to Cox regarding Cox's activities was due to a lack of communications between different Qwest divisions (which is not a violation of any requirements) and that Qwest's failure to implement procedures for ownership inquiries was due to Cox's failure to provide the required notice. Staff is certain that Qwest would have created procedures if notice had been provided by Cox, as it was in Qwest's interest to do so.

70. Although Staff believes that the evidence establishes Cox's knowing and intentional failure to comply with Commission orders or requirements, Staff also states that A.R.S. § 40-425 does not require a finding that a utility acted intentionally as a prerequisite to imposing a fine. Rather, a violation occurs any time a public service corporation fails or neglects to obey or comply with any order, rule, or requirement of the Commission, regardless of intent. Staff states that the fact that a utility acted intentionally is an aggravating factor to be considered in determining the amount of a fine. In response to Qwest's and Cox's arguments that no actual harm to the public occurred as a direct result of Cox's actions, Staff states that the public has a significant interest in ensuring that all public service corporations abide by Commission orders and rules, that they are held accountable when they do not, and that they are deterred from repeating noncompliance in the future. Staff believes that the $200,000 fine is "sufficiently heavy to secure obedience to Commission orders without being excessive." Staff also states that while Staff believes the imposition of the fine weighs upon the issue of whether the Settlement Agreement is in the public interest, Staff does not believe that the fine is something that needs to be included in the Settlement Agreement itself. Staff agrees with Qwest that if the Commission chooses to assess a fine, the fine would not constitute a material modification to the Settlement Agreement.

[16] Staff cites Docket No. T-00000A-97-0238 for the Section 271 proceeding and Docket No. T-00000A-00-0194 for the Wholesale Pricing docket.

Qwest's Position

71. Qwest's position is that the Complaint should be dismissed with prejudice as requested in the Joint Motion to Dismiss filed on November 30, 2007. Qwest states that the issues identified by Qwest in its Complaint have all been resolved.

72. Qwest states that the Settlement Agreement incorporates the Cox Audit Plan, which required Cox to return to each MTE terminal in Arizona and reconfigure its connections in compliance with the requirements of the MTE Access Protocol, which Qwest describes as having been developed in connection with the Section 271 Proceeding and containing industry "best practices" for MTE interconnection. Qwest states that the remedial details of the Cox Audit Plan were uncontested at the Phase I hearing. Qwest also states that it is not aware of any material deficiencies in the manner in which Cox executed the Audit Plan and that a Qwest "spot check" of Cox's repairs for 100 MTEs revealed that, but for one minor exception, all met the standards of the Cox Audit Plan. Also, Qwest states that its network personnel have not reported any access or interconnection issues with Cox at MTE terminals since the Cox Audit Plan was executed. According to Qwest, the issues raised in Qwest's Complaint regarding Cox's actions, damage to Qwest's facilities resulting therefrom, and any resulting effect on corresponding service reliability and public safety have been resolved.

73. With respect to the Phase II issues, Qwest states that Qwest and Cox reached agreement on a monetary payment that each believes is acceptable to resolve the case. In addition, Qwest states that, although future access was not an issue in this proceeding, Qwest and Cox have also agreed on processes for future access to Qwest terminals, which agreement has been embodied in the New ICA Amendment that has already gone into effect by operation of law. Qwest states that Staff is focusing on the manner in which Qwest and Cox arrived at the compensation amount for historical use, but that Qwest and Cox have never agreed upon any of the variables underlying historical use. Rather, Qwest states, Qwest and Cox each valued the case under the circumstances and settled on an amount with which each is comfortable. Qwest also states that, although neither Qwest nor Cox is aware of any other CLEC using subloops at Arizona MTEs, Qwest has vowed to treat similarly situated carriers similarly and thus to allow them to opt into the New ICA Amendment

if they so desire, alleviating any concerns about the New ICA Amendment's being discriminatory against any other CLEC. Qwest states that if a CLEC believes in the future that it is not being offered appropriate terms, the issue can be handled at that time.

74. Qwest states that the Settlement Agreement is fair, reasonable, and justified and should not be disturbed by the Commission. Qwest states that Qwest and Cox are capable organizations and vigorous competitors who have reached a voluntary, non-coerced settlement of disputed claims and that it is very appropriate for the Commission to assume that the Settlement Agreement is just and reasonable. Qwest also states that Cox's position that Cox has done nothing wrong should not be taken to mean that the Settlement Agreement is not just.

75. Qwest appreciates Staff's concern with the public interest issues raised by Qwest's Complaint, but states that the issues of interest to the public were resolved following the Phase I hearing. According to Qwest, there is "no weighty public interest" concerning the amount of payment agreed upon in the Settlement Agreement for Cox's past use of Qwest facilities. Qwest characterizes Phase II as "simply a damages case," and states that it has been resolved.

76. As to Staff's desire to impose a fine on Cox in this matter, Qwest states that it "does not take any position on the matter of imposition of a fine against Cox." Qwest states that the issue of a fine has "nothing to do with the relief sought by Qwest in its Complaint or the commitments in the Settlement Agreement." Qwest further provides that "the public interest counsels in favor of immediately granting the Joint Motion pursuant to the Settlement Agreement," as Qwest has been "deprived of the benefit of its settlement, without provision of interest."[17] Qwest states that it never requested that Cox be penalized by the Commission and that, regardless of whether or not Cox is penalized by the Commission, the Complaint should be dismissed promptly in accordance with the Settlement Agreement. Qwest further states that the Commission's fining Cox would be outside of the Settlement Agreement and not a modification of the Settlement Agreement's terms and conditions.

77. As to the remainder of Staff's recommendations, Qwest states that they are

[17] Qwest clarified that Cox placed the sum to be paid Qwest in an interest-bearing account in July 2008.

unnecessary, but that only one of them is highly objectionable to Qwest—the requirement for Qwest and Cox to "demonstrate and attest that public health and safety concerns raised by Qwest have been resolved" (Staff's Item 2 above). Qwest states that the audit, the Audit Report, and the Qwest testimony at the evidentiary hearing amply demonstrate that the public health and safety concerns raised by Qwest have been resolved and that Staff's request for the parties to demonstrate and attest that the concerns have been resolved is "vague and unnecessary, and should be rejected." Qwest's position as to the other requirements recommended by Staff is that they be included in separate ordering clauses rather than made modifications to the Settlement Agreement.

78. In closing its initial brief, Qwest states:

> Qwest prosecuted this Complaint as hard as any complaint that it has filed with the Commission. As a result, a settlement was reached with its largest competitor. The settlement resolves the matters raised in the Complaint, including the important questions surrounding network reliability and public safety. The settlement is transparent to all, and Qwest has pledged appropriate nondiscriminatory application. The Complaint proceeding should be dismissed and the Settlement Agreement should not be disturbed.[18]

79. In its reply brief, Qwest reiterates that the Settlement Agreement resolves all of the matters raised by the Complaint, making it appropriate to grant the Joint Motion to Dismiss and thus allow Qwest to receive compensation from Cox. Qwest adds that it is inappropriate to burden the Settlement Agreement with Staff's additional proposed safeguards and assurances or proposed monetary sanction against Cox. Qwest states that Staff's recommendations should either be addressed in a separate proceeding or, if adopted in this proceeding, addressed by separate ordering provisions that do not alter the Settlement Agreement itself. Qwest asserts that its interest is to support and defend the Settlement Agreement, which is just, and states that Cox's position is that imposing a fine on Cox will be a "deal breaker" and will "scuttle" the Settlement Agreement. Qwest asserts that imposition of a fine or other non-fine measures, if done through separate ordering paragraphs, will not constitute material modifications of the Settlement Agreement. Qwest asserts that the Commission may not order modifications to the Settlement Agreement itself.

[18] Qwest Post-Hearing Brief at 12.

80. Qwest further states:

> As Qwest has stated repeatedly, the matter of a possible fine against Cox bears no relationship to the resolution of the Complaint or the Settlement Agreement, and the dismissal of the Complaint in accordance with the Settlement Agreement should not have been delayed because of Staff's proposed fine. Now, the Complaint should be dismissed and the Settlement Agreement allowed to go into effect regardless of whether or not Cox is penalized by the Commission.
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> . . . .
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> The issue in this case is not whether the Settlement Agreement should be "approved" or "approved with modifications." The issue is whether the Settlement Agreement resolves the Complaint issues. ("The purpose of the hearing is to address the issues raised in Qwest's Complaint and the Settlement Agreement resolving those issues," Procedural Order, February 19, 2008, p. 3). The Settlement Agreement is not an agreement concerning ongoing terms related to a 47 U.S.C. § 251 term or service, and thus it was not filed and is not subject to review under 47 U.S.C. § 252(e). As Qwest has stated before, if the Commission is inclined to impose *any* terms on the parties in connection with this proceeding (whether a fine or non-fine terms), such additional terms must be supported by authority other than Section 252(e) and contained in a stand-alone order. The Settlement Agreement is not an agreement in which terms can simply be inserted.[19]

As to Cox's position that imposing a fine against Cox would be a material change to the Settlement Agreement, allowing Cox to declare the Settlement Agreement void, Qwest asserts that Cox's own witness admitted that the Settlement Agreement does not address the subject of a fine and could not point to any term of the Settlement Agreement that would be affected if a fine is assessed. Qwest's position is that the imposition of a fine would not modify any provision of the Settlement Agreement and thereby would not render the Settlement Agreement void.

81. In closing, Qwest reiterates that the Complaint was "hotly contested" and has been completely resolved through the three-day Phase I evidentiary hearing, Cox's "massive audit and remediation program to uncover and remediate thousands of terminals," the "hard negotiation" resulting in the Settlement Agreement, the two-day Phase II evidentiary hearing regarding the Settlement Agreement, and the expenditure of "innumerable" employee hours and considerable expense by both Qwest and Cox. Qwest asserts that it is time for the Commission to "do justice" by

[19] Qwest Post-Hearing Reply Brief at 4-5 (footnote omitted).

granting the Joint Motion to Dismiss the Complaint to allow implementation of the Settlement Agreement.

Cox's Position

82. Cox asserts that the Settlement Agreement "resolves a complex and hotly contested business dispute between Qwest and Cox, thus conserving resources of the Commission and the parties" and "eliminates the immediate need for a Phase [III] UNE Pricing Docket to resolve the issue of the appropriate non-recurring charge for 'on-premises' sub-loops." Cox states that the Settlement Agreement resolves to Qwest's satisfaction all of Qwest's concerns identified in the Complaint; does not discriminate against any other CLEC because no other CLEC has used such subloops; and will not result in the increase of any customer's rate or a change in any customer's service. Cox characterizes the case as "a commercial dispute between competitors that was resolved without harm or inconvenience to the public" and states that, given this, and to encourage parties to resolve their disputes through settlement, the Commission should approve the Settlement Agreement as in the public interest. Cox further states that Staff is seeking to alter the Settlement Agreement by conditioning dismissal of the case on the imposition of a fine against Cox, which Cox states the record does not justify, particularly not in the amount of $200,000.

83. Cox asserts that imposing a fine would violate Cox's constitutional due process rights because Staff never filed a complaint or order to show cause against Cox setting forth its intent to seek a fine; would not disclose the proposed fine amount until it was ordered to do so at the April 25, 2008, hearing; and then only revealed the very broad range of $80,000 to $4 million. Cox states that Staff's "eleventh-hour injection of fine proceedings threatens to undo a mutually satisfactory settlement between two litigants over a monetary dispute about alleged property ownership." Cox also asserts that there are no issues of public health and safety, as Qwest has agreed that Cox's connection practices did not actually threaten public health and safety, and Qwest was unable to identify any outages attributable to Cox's connections. In addition, Cox states, it has already spent $1.4 million to conform its connections to Qwest's MTE Access Protocol through the audit and is providing ongoing training to ensure future compliance.

84. Cox states that Staff's argument for a fine is based entirely on unsupported and stale

allegations and is not supported by the evidence. According to Cox, the evidence actually shows that Cox believed it had no obligations under the Subloop Amendment, that Qwest knew Cox was making connections at terminals where Qwest had wiring but said nothing for years, and that Qwest never implemented procedures for making ownership inquiries and placing orders under the Subloop Amendment. Cox further states that the evidence does not even establish Qwest's ownership of the facilities to which 800 corrective actions were made by Cox during the audit, the corrective actions upon which Staff bases its fine amount. Cox notes that Qwest's witness has conceded that proving ownership of the facilities at MTEs is a "rat's nest" and would be nearly impossible.

85. Cox states that there is no evidence of intentional misconduct by Cox, of harm to public health and safety, or of improper connections to facilities owned by Qwest. Cox further states that it has already made the settlement amount public (Staff's Item 1) and has indicated that it will not disrupt the settlement if Staff's Items 2-5 are imposed upon it. Cox urges the Commission to permit the Settlement Agreement to be consummated and this proceeding to be dismissed with prejudice.

86. Cox states that Qwest and Cox entered into the Settlement Agreement because both realized that the litigation would be protracted and expensive, as the main factual issue revolves around proof of Qwest's ownership of MTE subloops for more than 5,000 MTEs. Cox states that Cox and Qwest produced more than 122,000 pages of documents, with more to come, and 35 CDs of confidential documents during discovery alone and that the evidentiary hearing to resolve the ownership issues "would have been of epic proportions." In light of this, Cox says, "the parties realized that it was in their mutual best interests to settle the matter in order to avoid the ongoing costs, distractions, and uncertainties associated with continued litigation." In addition, Cox states, the Settlement Agreement is in the public's best interest because it allows Qwest and Cox to focus their resources on providing products and services to their customers without the distraction and expense of litigation and allows the Commission to address more pressing issues. If the Settlement Agreement had not been reached, Cox says, the parties would have begun taking depositions and preparing expert reports in anticipation of the "extensive evidentiary hearing" that would follow.

87. According to Cox, the Settlement Agreement settles the parties' dispute without

resolving the underlying issues—*i.e.*, which subloops are owned by Qwest and used by Cox; which MTE wiring is owned by Cox and used by Qwest; and what non-recurring charges, if any, Cox should pay Qwest for Cox's historic use of MTE subloops—and eliminates the need for a Phase III proceeding in the UNE pricing docket to establish a non-recurring charge for MTE subloops.

88. Cox asserts that public policy favors settlement of disputes and that requiring further proceedings will serve to discourage future settlements and mutual cooperation between parties. Cox also states that the Settlement Agreement will help to ensure that Arizonans living in MTEs continue to enjoy choice of competitive telephone services.

89. According to Cox, Staff failed to provide Cox adequate notice of the proposed fine, in violation of Cox's due process rights, and only provided a portion of its legal basis for imposing a fine (*i.e.*, the specific provision in the Subloop Amendment that Cox had allegedly violated) at the July 24, 2008, hearing. Previously, Cox says, Staff had relied on a different subsection only applicable to detached terminals, not the attached terminals to which Cox generally makes connections. Cox states that this change in Staff's testimony belies Staff's claim that Cox was provided sufficient advance notice of the bases for a fine. Cox also takes issue with Staff's inability to identify whether any of the 800 corrective actions involved detached terminals and describes how Staff "waffled" concerning whether Staff's recommendation for a fine was based on a Staff belief that Cox had willfully and deliberately committed violations. Cox states that imposing a fine for unintentional non-compliance would not further the cause of ensuring compliance. Cox also asserts that the $1.4 million already incurred by Cox for the audit, the $2.22 million payment Cox must make to Qwest under the Settlement Agreement if the settlement is allowed to proceed, and the "significant amount of attorney fees" that Cox has incurred over the past two years of this matter "have a significant deterrent effect far greater than the proposed $200,000 fine." Cox asserts that imposing a fine has the negative deterrent effect of discouraging settlements and that the public policy favoring settlement plainly outweighs whatever public policy interest Staff asserts would be advanced by imposing a fine in this matter, as there is "no evidence of willful misconduct and . . . a fine would undo the settlement between these litigants."

90. Cox also states that although it is unclear whether Staff bases its request for a fine on

an assertion that Cox's connection practices threatened public health and safety, there is no evidence to support such a position. Cox states that there never was an immediate threat to public health and safety, as confirmed in the Phase I hearing, and that Qwest's witness could not identify even one instance in which Cox's practice of leaving pigtails caused a service outage or any other harm to the public. In addition, Cox states, Cox reviewed all of its Arizona MTE connections at locations where Qwest also provides services and brought them all into compliance with Qwest's MTE Access Protocol, "regardless [of] whether Qwest owns the facilities or not and regardless [of] whether Cox caused the issue or not"; took "before" and "after" photos to document the remediation performed; and posted the photos on a website available to Qwest and Staff. Cox adds that Qwest has not referred one wiring problem at an Arizona MTE property to Cox since the audit was performed, although there are multiple thousands of connections made each month at MTE locations. Cox also takes issue with Staff's asserting for the first time at hearing on July 24, 2008, that Cox's installation practices may have violated the National Electric Code, particularly because Staff was unable to point to any instance in the Audit Report regarding violations of the National Electric Code. In the end, Cox states, there is nothing in the record to justify a fine based on public health and safety concerns.

91. Cox also states that there is no other legal or factual basis to justify a fine. Cox states that no one has contended that the public was harmed in any way by Cox's failure to pay Qwest for access under the Subloop Amendment. Instead, Cox states, the evidence establishes that Cox only violated the Subloop Amendment and that Qwest is now satisfied that its issues have all been resolved by the Settlement Agreement and the remedial measures taken during the audit. Cox takes issue with Staff's position that Cox has also violated two Commission orders. Cox asserts that Staff has taken the position that the first order violated is the Subloop Amendment itself, which Cox states became effective by operation of law, as the Subloop Amendment is part of the ICA. Cox states that the second Commission order allegedly violated is Qwest's MTE Access Protocol, which was approved in the Section 271 proceedings. Cox states that this "attenuated theory of public interest should be the first clue that a fine is not justified here." Cox states that there has been no injury to the public and no threat to the Commission's authority even if Cox made connections that breached the Subloop Amendment or violated the MTE Access Protocol.

92. Further, Cox states that its installation practices did not rearrange or tamper with Qwest's network. Cox states that during the audit, Cox rearranged its own facilities to conform to the MTE Access Protocol. Cox also maintains that it "designed and constructed its network facilities to attach at the last terminal on the property serving the individual customer, with the intent of avoiding use of any wiring at MTE premises that could belong to Qwest"; that it is "wrong to assume that Qwest owns the facilities located at MTEs simply because Qwest was using them before Cox"; and that "Cox had no reason to believe that it was doing anything wrong, for Qwest raised no objections" for a number of years. Cox asserts that it believed the Subloop Amendment to be applicable only to Field Connection Point situations, such as that found at the MTE complex known as Oakwood at Paradise Lakes, which was the impetus for Cox's entering into the Subloop Amendment with Qwest, only to determine that it would not be cost effective to offer telephone service at Paradise Lakes. Cox states that nothing changed for nearly four years after the Subloop Amendment was executed, although Cox continued openly to access MTE terminals and connect to service wiring to provide telephone service to MTE customers and continued to provide Qwest with 911 notices and number porting requests for those customers. Cox points out that even Qwest's witness testified that Cox's actions might have been caused by confusion or miscommunication between departments rather than being an intentional and knowing violation of the Subloop Amendment. Cox characterizes its actions as "a case of unintentional failure to comply with contractual notice provisions in the Sub-Loop Amendment and Qwest's MTE Access Protocol relating to 'pigtails' and other minor installation matters."

93. Finally, Cox argues that, even if the Commission is inclined to "scuttle" the Settlement Agreement by imposing a fine, there is no basis for the $200,000 figure recommended by Staff. Cox states that the figure is based on Staff's unsupported assumption that Cox undertook 800 corrective actions to Qwest-owned facilities. Cox states that the evidence shows that Qwest was only able to prove ownership of facilities at MTE terminal boxes in approximately 12 instances and that Staff has conceded that it did not attempt to prove Qwest ownership relating to the 800 corrective actions and instead relied upon statements made in the comment field of the Audit Report. Cox states that establishing ownership would be a "rat's nest" and that Staff's basing the fine on the 800 corrective

actions unfairly penalizes Cox for Qwest's lack of timely action in pursuing its alleged rights under the Subloop Amendment, as there would have been far fewer corrective actions needed if Qwest had raised its concerns earlier. Cox concludes that it cannot be in the public interest to "scuttle the settlement and continue with protracted litigation of complicated factual issues involving whether Qwest owns certain facilities, whether Qwest waived its claims or is otherwise barred by applicable statutes of limitations, and whether other defenses available to Cox warrants [sic] rejection of Qwest's claims for contract damages." Thus, Cox states, the Commission should approve the Settlement Agreement, dismiss the Complaint proceeding, and reject Staff's efforts to impose a fine.

Analysis and Resolution

94. Public policy generally favors private negotiated settlement of legal disputes.[20] In the context of public utilities regulation, public policy favors negotiated settlement of legal disputes when the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.[21] Settlement of disputes involving public service corporations allows the public service corporations to devote their time and resources to their primary missions of providing utility service to their customers; conserves scarce Commission resources; and allows public service corporations to control to a greater extent the amount of their resources (monetary and otherwise) expended on disputes, thereby protecting ratepayers. There are instances when public policy does not favor settlement—such as where Commission orders or rules have been intentionally violated or where the settlement agreement is not consistent with the public interest for another reason, perhaps because it offers an unfair advantage to a party with greater bargaining power and could harm competition. However, this case is not one of those instances.

95. In the instant case, Qwest and Cox, two public service corporations that can best be

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[20] *See, e.g., Yollin v. City of Glendale*, 219 Ariz. 24 ¶15, 191 P.3d 1040, 1046 (Ariz. Ct. App. 2008) (citing *Dansby v. Buck*, 92 Ariz. 1, 11, 373 P.2d 1, 8 (1962) ("It has always been the policy of the law to favor compromise and settlement; and it is especially important to sustain that principle in this age of voluminous litigation."), quoted in *Emmons v. Super. Ct.*, 192 Ariz. 509, 512, 968 P.2d 582, 585 (Ariz. Ct. App. 1998); *Myers v. Wood*, 174 Ariz. 434, 435, 850 P.2d 672, 673 (Ariz. Ct. App. 1992)); *cf.* Ariz. Rule of Evid. 408 (protecting the confidentiality of settlement negotiations, to encourage settlement negotiations).

[21] *See, e.g.*, Cal. PUC Rule of Practice & Procedure 12.1 ("The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest."); *San Diego Gas & Electric Co.*, Cal. PUC Decision No. 07-07-011 (July 12, 2007) (stating the California PUC's "strong public policy favoring settlements if they are fair and reasonable in light of the whole record").

described as strong rivals in Arizona, have come together to resolve a bitter dispute over Cox's accessing subloops in Arizona MTE settings. Qwest, the actual Complainant in this matter, has indicated that all of the issues it raised in its Complaint have been fully resolved to its satisfaction. Cox, the Respondent in this matter, has expended $1.4 million to bring its connections at Arizona MTE settings (at which Qwest also has facilities) into compliance with Qwest's MTE Access Protocol; has undertaken training of its field personnel; has committed to continuing training of its field personnel; has agreed to pay Qwest $2.22 million for its past use of Qwest's facilities in Arizona MTE settings; and has agreed to allow Qwest to use Cox affiliate-owned facilities free of charge for five years. Qwest and Cox are both satisfied that the Settlement Agreement reached between them is in their best interests and is in the public interest and believe that this matter should be dismissed without further proceedings. Staff, however, strongly believes that Cox should be required to pay a $200,000 fine into the State's General Fund as a consequence of what Staff believes to have been Cox's intentional violations of Commission orders.

Imposing a Fine Against Cox

96. Although Staff has not filed a Complaint in this case, Staff has taken on the role of Complainant for purposes of the issue of imposing a fine against Cox. As a result, Staff has the burden of establishing that fining Cox is authorized by the law and supported by a preponderance of the evidence. Staff has not met that burden. The evidence of record, as a whole, does not establish that Cox intentionally violated Commission orders, rules, or requirements or that Cox should be fined $200,000 for its actions.

97. A.R.S. § 40-425(A) states:

> Any public service corporation which violates or fails to comply with any provision of the constitution or of this chapter, or which fails or neglects to obey or comply with any order, rule or requirement of the commission, the penalty for which is not otherwise provided, is subject to a penalty of not less than one hundred nor more than five thousand dollars for each offense.

98. Staff asserts that Cox must be fined for its actions because Cox knowingly and intentionally violated the ICA and Commission orders, specifically the orders in the Section 271 Proceeding and the Wholesale Pricing Docket. Staff reasons that Cox violated the ICA by violating

the Subloop Amendment and the MTE Access Protocol incorporated by reference in the Subloop Amendment. Neither the Subloop Amendment nor the MTE Access Protocol was the subject of a specific Commission order. However, Staff explains that the requirements found therein were addressed in extensive proceedings in the Section 271 Proceeding and the Wholesale Pricing Docket, which resulted in orders "requir[ing] parties to follow the procedures adopted by the Commission in those Orders . . . [and] establish[ing] the prices to be charged by Qwest and paid by Cox or other of its competitors when accessing Qwest's MTE terminals and subloops." Staff reasons that because Cox was an active participant in the Section 271 Proceeding and the Wholesale Pricing Docket, Cox was aware of the orders resulting therefrom, and Cox was obligated to notify Qwest of the need for an ICA Amendment before it entered even one terminal after those Commission Orders had issued. Thus, Staff reasons, when Cox entered terminals at MTEs without having done this, "Cox violated the underlying Commission Orders in both the Section 271 [P]roceeding and the Wholesale Pricing Docket, as well as its ICA and Subloop Amendment with Qwest." Staff has not identified the specific provisions within these orders that allegedly have been violated by Cox. Qwest likewise did not provide in its Complaint specific citations to Commission Orders that had been violated.[22] Cox has argued that the attenuated nature of these alleged violations shows that they lack merit.

99. Decision No. 64880 (June 5, 2002) in the Section 271 Proceeding created the language that would become Section 9.3.5.4.1 of the Subloop Amendment,[23] but did not order any CLEC to comply with the language. Rather, it ordered Qwest to file a revised Statement of Generally Available Terms ("SGAT") incorporating the language; ordered CLECs and other interested parties to file written comments concerning the proposed SGAT language within 10 days after Qwest's filing of the revised SGAT language; and ordered Staff to file its recommendation to adopt or reject the proposed SGAT language along with a procedural recommendation for resolving any remaining dispute within 20 days after Qwest's filing of the revised SGAT language. In addition, Decision No. 64880 did not name Cox as one of the CLECs that participated in that portion of the Section 271

[22] In its Complaint, Qwest stated: "Cox's conduct described herein violates orders of this Commission, as implemented through the parties' ICA and Subloop Amendment, that require Cox to compensate Qwest for subloops, FCP connections, and other facilities and services associated with MTE Terminal and Pedestal connections." Complaint at 6.

[23] It was created as proposed Section 9.3.5.4.1 of Qwest's SGAT.

proceeding, which dealt with line-splitting and NID requirements. As Cox was not a party to that portion of the Section 271 Proceeding and was not ordered to do anything by Decision No. 64880, Cox cannot have violated Decision No. 64880.

100. Decision No. 64922 (June 12, 2002), the Phase II Order in the Wholesale Pricing Docket, established Qwest's wholesale rates and charges and a number of recurring and non-recurring charges for UNEs, interconnection, collocation, and other ancillary services. Cox was granted intervention in the matter and participated actively specifically in the area of subloop and access to wire in MTE locations. The hearing in Phase II of the Wholesale Pricing Docket took place over seven days in July 2001, months before the Subloop Amendment was executed, and the Decision was issued after the Subloop Amendment was executed. Cox's participation resulted in the Commission's adopting Cox's recommendation to have both campus wire and intrabuilding cable defined and priced as "on-premises wire" and in Qwest's being required to relinquish wire on the property owner side of demarcation upon request and to price that wire at residual value.[24] Decision No. 64922 ordered Qwest to charge certain prices, but did not in and of itself order Cox or any other CLEC to pay those prices. The applicability of the prices and the obligation to pay them is contingent upon being party to an ICA with Qwest and results from the terms of the ICA itself. For a CLEC such as Cox, the duty to pay those prices, if applicable, is a contractual obligation rather than a direct order from the Commission. Thus, Cox did not violate Decision No. 64922 when it failed to pay those prices.

101. Although the evidence does not demonstrate that Cox has violated Decision No. 64880 or 64922, the evidence does demonstrate that Cox may have violated its ICA with Qwest, specifically that portion of the ICA adopted through the Subloop Amendment, and that Cox should have known that it may have been violating that Subloop Amendment when it failed to provide Qwest with notice of Cox's intent to provide access to customers residing within MTEs, as required under § 9.3.5.4.1 of the Subloop Amendment.

102. Cox has asserted consistently that Cox did not provide the notice required under §

[24] Qwest had distinguished between them and priced them differently.

9.3.5.4.1 because Cox did not believe that it was obligated to do so. Specifically, Mr. Garrett stated:

> Before Qwest filed this proceeding, Cox did not seek permission under the Sub-Loop Amendment to enter specific Qwest terminals because Cox did not believe that it had any obligation to do so. In 2002, Cox was considering providing service to a large apartment complex known as Oakwood at Paradise Lakes. Because of the unusual facilities arrangement at the property, Qwest informed Cox that it could use Qwest's on-premise wiring but that Cox would need to order a Field Connection Point, which required that the parties enter into a Sub-Loop Amendment. Cox signed the Sub-Loop Amendment presented by Qwest so that it could obtain a Field Connection Point at Oakwood. However, Cox subsequently decided not to order the Field Connection Point and not to provide services at Oakwood. Because of its decision not to use the Field Connection Point, Cox did not consider it had triggered any of the obligations under the Sub-Loop Amendment.
>
> Accordingly, until Qwest filed this proceeding, it was not Cox's practice to make inquiries to Qwest or building owners as to the ownership of inside wire, intra-building cable, on-premises wire, or other types of sub-loop. Cox's right-of-entry contracts with building owners typically include a section in which ownership of inside wiring is represented as being with the building owner. Cox's practice was to extend its own facilities to the last common terminal in an MTE complex, believing that in so doing it was avoiding use of any Qwest owned wire.[25]

103. Mr. Garrett was a credible witness. Mr. Garrett's statements as to Cox's beliefs concerning accessing Qwest-owned wire is bolstered by the language of the Subloop Amendment itself. As set forth in Findings of Fact No. 3, the Subloop Amendment Main stated that "Cox reserve[d] the right to seek access to additional Subloop elements, such as On Premises Wire, Campus Wire or Inside Wire, through subsequent interconnection agreement amendments." This language supports that Cox's belief in April 2002 was that the Subloop Amendment applied only to Field Connection Points, as the language indicates that the Subloop Amendment does not apply to on-premises wire, campus wire, or inside wire. In the Wholesale Pricing Docket, Qwest had asserted that campus wire and intrabuilding wire should be treated and priced differently. As Cox must have been well aware at the time of the Subloop Amendment's execution of Qwest's position that these were different types of wire, it would have been reasonable for Cox to believe, in light of the language of the Subloop Amendment Main, that the Subloop Amendment had a limited scope that did not include on-premises wire, campus wire, or inside wire. Cox would have been careless to believe

[25] Ex. S-18 at 1-2.

that, however, in light of the rather expansive language of Attachment 1 to the Subloop Amendment, which states:

> 9.3.1.1. A Subloop is defined as any portion of the Loop that it is Technically Feasible to access at terminals in Qwest's outside plant, including inside wire. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, network interface device, minimum point of entry, single point of interconnection, main distribution frame, remote terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). This Section does not address Dark Fiber Subloop.
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> 9.3.1.1.1 Building terminals within or physically attached to a privately owned building in a Multi-Tenant Environment (MTE) are one form of accessible terminal. Throughout this Section 9.3 the Parties obligations around such "MTE terminals" are segregated because Subloop terms and conditions differ between MTE environments and non-MTE environments.
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> . . . .
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> 9.3.1.1.1.1 MTE Terminals: Accessible terminals within a building in a MTE environment or accessible terminals physically attached to a building in a MTE environment. Qwest Premises located on real property that constitutes a campus environment, yet are not within or physically attached to a non-Qwest owned building, are not considered MTE Terminals.[26]

104. The apparent conflict between the text of the Subloop Amendment Main and Attachment 1 makes it unclear what the scope of the Subloop Amendment was intended to be. Thus, it is not possible to say that Cox, more likely than not, knew what its duties were related to subloop access in MTE locations and intentionally violated them. Instead, it is only possible to say that Cox should have been aware that there were conflicts in the Subloop Amendment, should have had any conflicts reconciled before executing the Subloop Amendment (as should have Qwest),[27] and should have realized that Qwest believed it owned cable on private property in the context of MTEs.

105. Cox's behavior bolsters our conviction that Cox did not believe, at least until the Complaint was filed, that it had a duty under the Subloop Amendment to notify Qwest of its intent to access MTE terminals or to pay Qwest for the access that it obtained at MTEs. For approximately

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[26] Subloop Amendment Att. 1 at 1-2 (emphasis added).

[27] In light of the conflicting language in the documents and the asserted differences of opinion regarding what the document actually was intended to cover and did cover, one can question whether there was the "meeting of the minds" needed for formation of a legal contract.

eight years before the Complaint was filed, Cox very openly went to approximately 5,200 MTE environments, accessed lines through approximately 30,000 MTE terminals, and established service to tens of thousands of individuals. (*See* Ex. Qwest 1 at 13.) In each and every one of these instances, Cox provided Qwest with notice for 911 purposes. For the majority of them, Cox also provided Qwest with notice for local number portability purposes. It is very difficult to believe that Cox would have behaved in such an open fashion if Cox had believed that it had a legal duty to behave otherwise. Cox would have had no reason to believe that Qwest would be forgiving if Cox were to violate a legal obligation to Qwest, as the two companies are strong competitors.

106. In support of its position that Cox has intentionally violated Commission orders and the ICA, Staff has asserted that we should draw negative inferences from Cox's remediation efforts and willingness to settle for $2.22 million in this matter and from Cox's involvement as a Respondent in another complaint docket.[28] Regarding the remediation and settlement amount, Staff's reasoning is, essentially, that Cox would not have expended so much money for remediation or been willing to pay Qwest such a large settlement amount if Cox did not have a guilty conscience resulting from its intentional wrongdoing. While it is easy to follow Staff's logic, we do not believe that it would be appropriate to hold Cox's remediation efforts against it and use them to find that Cox has engaged in intentional violations. The public interest is well served by remediation efforts, regardless of the motivation behind them. Because we desire to encourage rather than discourage remediation efforts, we will not draw a negative inference from Cox's remediation efforts in this case. Likewise, because public policy generally favors settlement, as described above, and we desire to encourage settlement efforts when the public interest will thereby be served, we will not draw a negative inference from Cox's willingness to pay Qwest $2.22 million to avoid extended and complex litigation in this matter. Regarding the other complaint docket in which Cox is involved, we do not believe it appropriate to consider the allegations made in that docket in this matter, as the two dockets are wholly unrelated, and no findings of fact have been made in the other case. We believe that to do otherwise would be unfair to Cox.

[28] The other complaint docket referred to by Staff is believed to be Docket No. T-03471A-05-0064, which is still pending, and in which no Decisions have yet been issued.

107. Even Qwest now believes that only the Subloop Amendment has been violated and that Cox may have had some confusion or miscommunication between departments as to its duties under the Subloop Amendment. (*See* Tr. at 92-94.) Qwest also has acknowledged that it did nothing to enforce the Subloop Amendment from April 2002 until the fall of 2005, although Qwest was losing tens of thousands of customers to Cox throughout the period. (Tr. at 95-96.) Qwest only took action in late 2005 because it had detected what it called a "pattern of substandard access" to Qwest's terminals at MTEs. (Tr. at 114.) Qwest has stated that it has no idea how many of the MTE terminals were accessed by Cox before the Subloop Amendment was executed, (Tr. at 195), and has acknowledged that it is assuming its ownership of facilities at MTEs rather than actually establishing ownership through records, as it discovered after some effort that establishing the ownership of these facilities "was going to be . . . a rat's nest that needed to be unraveled," (Tr. at 97).

108. The facts are that Cox very openly obtained access to approximately 30,000 pedestals at approximately 5,200 MTE properties to provide service to tens of thousands of former Qwest customers over a period of approximately eight years; that Cox provided actual notice to one division of Qwest for all of these customers and to two different Qwest divisions for the majority of these customers; that Cox has testified credibly that it did not believe it was doing anything wrong in accessing these terminals, as its policy and practice was to obtain access at points where the customer owned the wire; that Cox did not believe when it was executed that the Subloop Amendment applied to non-Field Connection Point subloop access; that the Subloop Amendment Main contains language suggesting that the Subloop Amendment does not apply to inside wire, on-premises wire, or campus wire; that Cox was not even aware of the MTE Access Protocol until the Complaint was filed; and that it is not possible to determine at this point to what extent Qwest owns the wire accessed by Cox or to what extent Cox accessed wire after the Subloop Amendment was executed. The evidence also establishes that Cox should have known that there was an unresolved issue concerning whether the Subloop Amendment applied to non-Field Connection Point subloop access, as Attachment 1 clearly references other types of MTE subloop access, and should have addressed that issue with Qwest so that it could be resolved rather than simply continuing with its prior practices. Cox's behavior in entering into the Subloop Amendment without being cognizant of all of its terms and the scope of

their applicability was unwise, as was Qwest's behavior in apparently doing the same thing and then failing to pursue its belief that Cox was violating the Subloop Amendment when Qwest first formed this belief. In the end, there is more that is unknown than known in terms of whether Cox actually violated the Subloop Amendment and to what extent and the extent to which the MTE terminals accessed actually resulted in Cox use of Qwest facilities. This level of uncertainty does not support the imposition of a penalty.

109. As stated previously, A.R.S. § 40-425(A) authorizes the Commission to penalize a public service corporation if it "violates or fails to comply with any provision of the constitution or of [A.R.S. Title 40, Chapter 2], or . . . fails or neglects to obey or comply with any order, rule or requirement of the commission." Because Staff has not established, and the record as a whole does not establish, that Cox has violated or failed to comply with any provision of the constitution or of A.R.S. Title 40 Chapter 2, or has failed or neglected to obey or comply with any Commission order, rule, or requirement, it is not appropriate for the Commission to penalize Cox through the imposition of a fine under A.R.S. § 40-425(A).[29] In addition, it is unlikely that such a fine would have the deterrent effect desired by Staff. While Cox has clearly been careless, it should be deterred from repeating that carelessness through the $1.4 million cost of its remediation efforts, the $2.22 million to be paid to Qwest, the lost revenue from allowing Qwest to use Cox affiliate-owned facilities without payment for five years, and the undoubtedly considerable sum already spent defending itself in this docket. Adding another $200,000 to be paid to the General Fund is not necessary under the circumstances, would simply be punitive, and most importantly is not authorized by A.R.S. § 40-425(A).

Cox's Assertion of Due Process Violation

110. Cox argues that its constitutional due process rights have been violated because Staff did not provide it with notice of the proposed fine at an early enough stage in the proceedings and did not express the basis for the fine with sufficient specificity for Cox to defend itself meaningfully. While we understand that Staff's procedural posture regarding this issue, essentially taking on the

[29] Although Staff has asserted that the imposition of the fine is not intended to be punitive, only a deterrent to future misconduct, A.R.S. § 40-425(A) actually calls a fine imposed thereunder a penalty. Ergo, such a fine is inherently punitive in nature.

role of a de facto Complainant without having filed a Complaint, is somewhat unorthodox, we also believe that Cox's due process rights have been sufficiently protected in this case. Cox first received notice from Staff that a fine might be recommended in May 2006, with the filing of Staff's Request for Procedural Schedule. Although Staff did not pursue the fine recommendation again until the prefiled testimony for the Phase II hearing in this matter, filed on April 7, 2008, Cox had been put on notice almost two years earlier that Staff might recommend that a fine be imposed against Cox in this matter. Staff revealed the range of fine at the hearing on April 25, 2008, and, pursuant to a directive from the ALJ, then revealed the actual recommended fine amount and the rationale behind it in its rebuttal testimony filed on May 9, 2008. Because Cox had raised the issue of due process, the ALJ provided Cox with an opportunity to respond orally to Staff's recommendation at hearing and offered to provide Cox with additional time to respond. Indeed, the ALJ offered to provide Cox "whatever additional time it need[ed to] conduct discovery regarding the fine . . . [and] to prepare an appropriate response and to explore the basis of Staff's fine recommendation, whatever it may be." (Tr. at 164.) Cox declined, arguing that the additional time would not help to remedy Cox's constitutional due process concerns and stating that Cox should not have a discovery obligation thrust upon it. (Tr. at 164.) Cox was also provided the opportunity to respond in writing to Staff's recommendation, which it did, through two separate post-hearing briefs.

111. In light of the notice that was provided to Cox in May 2006 and again in April 2008 and May 2008, the several opportunities that Cox had to respond to Staff's recommendation for imposition of a fine, and the rebuffed offer from the ALJ to provide Cox with additional time to prepare its response, we do not believe that Cox's constitutional due process rights have been violated. Procedural due process requires that a respondent be provided notice that is "reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them the opportunity to present their objection"[30] and an opportunity to be heard "at a meaningful time and in a meaningful manner."[31] In this case, Cox was provided actual notice that

[30] *Comeau v. Arizona State Bd. of Dental Examiners*, 196 Ariz. 102, 108, 993 P.2d 1066, 1072 (Ariz. Ct. App. 1999) (quoting *Iphaar v. Industrial Comm'n*, 171 Ariz. 423, 426, 831 P.2d 422, 425 (Ariz. Ct. App. 1992)).

[31] *Comeau*, 196 Ariz. at 106-07, 993 P.2d at 1070-71 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893 (1976)).

Staff believed a fine might be appropriate in May 2006, in Staff's Request for a Procedural Schedule. The issue of a fine did not arise again until the prefiled testimony in April 2008 in the Phase II hearing, but it is implausible that Cox had not noticed or had forgotten about Staff's initial suggestion that a fine might be appropriate. In addition, as a public service corporation obligated to comply with Arizona laws for regulated utilities, Cox is responsible for being aware of those laws, including A.R.S. § 40-425(A), quoted above. As the Qwest Complaint had alleged violations of Commission orders, in addition to violations of the parties' ICA, Cox cannot credibly argue that it was unaware that it might be subjected to fines under A.R.S. § 40-425(A).[32] Cox received adequate notice and a meaningful opportunity to defend itself against Staff's assertion that a fine should be imposed. Cox's procedural due process rights have not been violated.

Staff's Recommendations

112. Staff has proposed six requirements to be imposed upon Qwest and/or Cox, essentially as conditions to approval of the Settlement Agreement, although Staff referred to them as "modifications." We will address each of them here.

113. As discussed above, Item 1 has already been resolved, as the lump-sum settlement

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[32] *Cf., e.g., Beehive Tel. Co. v. Public Serv. Comm'n of Utah*, 89 P.3d 131, 141 (Utah 2004). In Beehive, the Utah Supreme Court stated:

> While Beehive was never explicitly informed that its violations could lead to potentially large fines, section 54-7-25 of the Utah Code clearly states that a fine is mandatory if such violations occur:
>
> > (1) Any public utility that violates or fails to comply with this title or any rule or order issues under this title . . . is subject to a penalty of not less than $500 nor more than $2,000 for each offense.
> >
> > (2) Any violation of this title or any rule or order of the commission by any corporation or person is a separate and distinct offense. In the case of a continuing violation, each day's continuance of the violation shall be a separate and distinct offense.
>
> Utah Code Ann. § 54-7-25 (1994). Admittedly, neither the Division nor the Commission specifically alleged that Beehive was violating Utah Code section 54-3-7, the section upon which the administrative law judge predicated the fine. However, both the Division and Commission unequivocally informed Beehive that its policy of charging toll calls violated its tariff. Therefore, Beehive should have been on notice that it was varying from its schedule in violation of section 54-3-7 and would be subject to appropriate penalties under section 54-7-25.

Id. While we would not have determined, as did the Utah Supreme Court, that the statutory provision making a utility "subject to" a penalty is a mandate, as that is not how we have interpreted A.R.S. § 40-425(A)'s very similar language, we agree with the Utah Supreme Court's reasoning that when a utility is provided notice that it has allegedly committed a violation of a type that could result in a statutory penalty (even if the statute authorizing the penalty is not expressly referenced), the utility should have been on notice that it could be subject to a penalty under the statute.

amount has been revealed.

114. Item 2 has been opposed by both Qwest and Cox as unnecessary and by Qwest as vague. While we understand to some extent why Qwest and Cox feel that Item 2 is unnecessary, as they have both asserted in this proceeding that all public health and safety concerns raised by Qwest have been resolved, we do not see any harm in requiring them to attest to that expressly in a joint writing to be filed as a compliance item with the Commission's Docket Control. We do not believe that any additional demonstration is needed beyond this attestation requirement, which is reasonable and should be imposed.

115. Item 3, requiring Cox to file five annual attestations as to its employees' training in proper MTE interconnection procedures, is reasonable, as it will help to ensure that Cox continues to be cognizant of the need to train its technical employees performing work at MTEs for at least the next five years and actually provides that training. As Cox has stated that it is committed to providing continuing training to these personnel, this is a minor burden, is reasonable, and should be imposed.

116. Item 4 requires Qwest and Cox to attach a copy of the Cox Audit Plan to the Settlement Agreement. As the Cox Audit Plan is referenced in the Settlement Agreement and is part of the foundation of the parties' resolution of this matter, it is reasonable to require Qwest and Cox to attach a copy of it to the Settlement Agreement. This will help to ensure that the terms of the complete settlement arrangement are available to the Commission and the public, while imposing a very slight burden on Qwest and Cox.

117. Item 5 will require Qwest and Cox to perform a very small random audit to ensure that Cox field personnel continue to comply with the requirements of the MTE Access Protocol under the New ICA Amendment. This small audit, to be performed approximately one year after the effective date of this Decision, will serve as a valuable indicator of either continuing compliance or a need for Cox to step up its training efforts. Because it is small, it will be only a minor burden, and the benefit to be gained from the verification of compliance or early detection of noncompliance is great, as it may prevent future costly disagreements between Qwest and Cox. The requirement is reasonable and should be imposed.

118. Item 6 was Staff's fine recommendation, which we have discussed at length above.

119. Qwest and Cox have indicated that none of Staff's recommended requirements that we have decided to impose are "deal breakers." It is reasonable to impose these requirements in separate ordering paragraphs herein, so as to alleviate any concern that they are intended to be modifications to the Settlement Agreement itself.

Approval of the Settlement Agreement

120. Based on the entire record before us, we find that the Settlement Agreement is fair, reasonable, and in the public interest. It alleviates all of the issues raised in Qwest's Complaint to Qwest's satisfaction; recognizes the extensive remediation work completed by Cox; addresses the use of Cox affiliate-owned facilities by Qwest for at least five years after the Settlement Agreement's effective date; eliminates the need for protracted and complex litigation to determine ownership of facilities at MTEs and the extent to which Cox used Qwest facilities and should pay for them; eliminates the need for additional litigation to determine what was actually required under the Subloop Amendment; eliminates the need for additional litigation to determine what rates applied to Cox's access to Qwest facilities, if any; and will allow for the Arbitration Settlement Agreement to go into effect, thereby also eliminating the need for a portion of the pending arbitration involving Cox and Qwest. The public interest will not be served by requiring Cox and Qwest to devote additional resources to protracted litigation and will not be served by requiring the Commission to expend additional scarce resources for protracted litigation. Any minimal risk to the public health or safety that may have potentially arisen from Cox's conduct has long since been resolved by Cox's remediation efforts, which Qwest has determined to be in compliance with its MTE Access Protocol.

121. The Settlement Agreement before us is a fair and reasonable resolution of the issues that were raised in Qwest's Complaint and should be adopted.

CONCLUSIONS OF LAW

1. Qwest and Cox are both public service corporations within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Qwest and Cox and the subject matter of Qwest's Complaint.

3. The Settlement Agreement entered into by Qwest and Cox is a fair and reasonable resolution of the issues that were raised in Qwest's Complaint, is in the public interest, and should be adopted.

4. The New ICA Amendment filed in Docket Nos. T-01051B-07-0617 et al. has gone into effect by operation of law.

5. Cox's procedural due process rights were not violated by Staff's pursuit of a fine in this matter.

6. Staff's recommendations described in Findings of Fact No. 54 as Items 2, 3, 4, and 5, as modified in Findings of Fact Nos. 114 through 116, are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Settlement Agreement attached hereto as Exhibit A is hereby approved.

IT IS FURTHER ORDERED that Qwest and Cox shall file with the Commission's Docket Control, within 30 days after the effective date of this Decision, as a compliance item in this Docket, sworn affidavits of qualified officers of Qwest and Cox attesting that all of the public health and safety issues raised by Qwest in its Complaint filed in this matter have been resolved.

IT IS FURTHER ORDERED that Cox shall file with the Commission's Docket Control, by April 15 of each year, for the next five years, as a compliance item in this Docket, the sworn affidavit of a qualified officer of Cox attesting that all Cox employees or contractors performing work at multi-tenant environments have been trained in proper multi-tenant environment interconnection procedures under the New ICA Amendment.

IT IS FURTHER ORDERED that Qwest and Cox shall file with the Commission's Docket Control, within 30 days after the effective date of this Decision, as a compliance item in this Docket, a copy of the Settlement Agreement that includes the Cox Audit Plan as an attachment thereto.

IT IS FURTHER ORDERED that, between 12 months and 15 months from the effective date of this Decision, after receiving notice of the 20 multi-tenant environment terminals selected at random by Commission Utilities Division Staff, Qwest and Cox shall jointly perform an audit of the 20 multi-tenant environment terminals, including the taking of "before" and "after" digital photos, to

ensure that Cox field personnel are continuing to comply with the requirements of the New ICA Amendment and shall file with the Commission's Docket Control, as a compliance item in this Docket, within 30 days after the random audit is completed, a report describing the results of the random audit and including the photos taken.

IT IS FURTHER ORDERED that Commission Utilities Division Staff shall, 12 months after the effective date of this Decision, provide Qwest and Cox with notice of the 20 multi-tenant environment terminals selected at random to be audited as described in the previous ordering paragraph.

IT IS FURTHER ORDERED that the Commission Utilities Division Compliance Section shall file with the Commission's Docket Control, within 10 days after Cox and Qwest file the affidavits required herein and the Settlement Agreement that includes the Cox Audit Plan as required herein, a Memorandum stating the status of Cox's and Qwest's compliance with these filing requirements.

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IT IS FURTHER ORDERED that the Complaint is dismissed with prejudice pursuant to the Settlement Agreement and this Opinion and Order.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of Dec., 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT

DISSENT

SNH:db

SERVICE LIST FOR: QWEST CORPORATION and COX ARIZONA TELCOM, L.L.C.

DOCKET NOS.: T-01051B-06-0045 and T-03471A-06-0045

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EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE – ARIZONA COMPLAINT PROCEEDING

This Confidential Settlement Agreement and Mutual Release – Arizona Subloop Dispute ("this Agreement") is entered into between Qwest Corporation ("Qwest") and Cox Arizona Telcom, L.L.C. ("Cox"). Qwest and Cox are each a "Party" to this Agreement and are referred to collectively as "the Parties." The Effective Date of this Agreement shall be as set forth in Paragraph 8 below.

RECITALS

A. WHEREAS, Qwest and Cox are parties to a complaint proceeding captioned as *Qwest Corporation v. Cox Arizona Telcom, L.L.C.*, Docket Nos. T-0105B-06-0045 and T-03471A-06-0045 pending before the Arizona Corporation Commission ("ACC") ("the Complaint Proceeding"), in which Qwest seeks injunctive relief in Phase I and damages and other relief in Phase II associated with Cox's access to, alleged misuse of, alleged damage to, and alleged obligation to pay Qwest for use of Qwest-owned facilities in Multi-Tenant Environments ("MTEs") in Arizona, including but not limited to Qwest-owned terminals, Subloops, and several sub-elements of Subloop. (The several sub-elements of Subloop are on-premises wire, campus wire and intrabuilding cable, which shall collectively be referred to as "On-Premises Wire.");

B. WHEREAS, to avoid the inconvenience, expense and uncertainty of further litigation, the Parties desire to enter into this Agreement, along with the Settlement Agreement Concerning Subloop Arbitration Issues-Arizona (the "Subloop Arbitration Settlement Agreement"), to resolve all issues associated with the Complaint Proceeding;

NOW, THEREFORE, in consideration of the promises herein and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows

AGREEMENT AND RELEASE TERMS

1. **Past Access and Use by Cox of Qwest-Owned Subloop at MTEs.** In settlement of Qwest's damages claims in the Complaint Proceeding, Cox shall pay Qwest the sum of Two Million, Two Hundred, Twenty Thousand Dollars ($2,220,000.00) within ten days of the Effective Date of this Agreement. In addition to compensating Qwest for claims and any and all damages associated with the issues alleged in the Complaint Proceeding, this payment shall be in lieu of any and all non-recurring charges and monthly recurring charges for Cox's use of Qwest's terminals and Subloop (including On-Premises Wire) in MTEs in Arizona from the beginning of time up to and including the Effective Date.

2. **Inspection and Repair Plan.** In further settlement of Qwest's claims associated with the issues alleged in the Complaint Proceeding, Cox has undertaken the inspection and remediation work outlined in the Notice of Filing of Cox Arizona Telcom, L.L.C. MTE Audit Plan ("Audit Plan") filed in the Complaint Proceeding on May 15, 2006. Such work has included, in addition to the processes outlined in the Audit Plan, the processes and procedures additionally agreed to by Cox during Phase I of the Complaint Proceeding, including: (1) taking "before" and "after" photographs of each terminal inspected; and (2) posting the photographs and inspection and remediation data on a non-public website available to Qwest.

3. **Dismissal of Complaint Proceeding.** Within seven days after the Amendment (as defined in Paragraph 1.1 of the Subloop Arbitration Settlement Agreement) becomes effective pursuant to A.A.C. R14-2-1508, the Parties shall move for a stipulated dismissal of the Complaint Proceeding with prejudice and with each side to bear its own costs and attorney fees.

4. **Qwest's Use of Cox Affiliate-Owned, Telephone Wire at MTEs.** Qwest may use and continue to use Cox affiliate-owned on-premises terminals and telephone wire in MTEs in Arizona to serve Qwest customers for five years following the Effective Date of this

Agreement without payment to Cox or any Cox affiliate. Such telephone wire shall not include coaxial cable and fiber optic cable. All Qwest connections shall be made in accordance with the terms of version 1.1 of the MTE Access Protocol. Cox agrees to cause affiliated entities to allow the access and use described herein. Cox's consent to Qwest's use of such facilities is additional consideration for this Agreement. If after five years following the Effective Date of this Agreement Qwest continues to serve any MTE customers using Cox affiliate-owned on-premises terminals and telephone wire, Qwest and Cox shall negotiate for payments based on the number of connections and appropriate rates.

5. Releases and Covenant Not to Sue.

5.1 Except with respect to the obligations expressly set forth in this Agreement, Qwest and Cox covenant not to sue and release and forever discharge the other from all actions, claims, counterclaims, cross-claims, third-party claims, suits, causes of action whether asserted or not, rights, debts, disputed demands for payment or other relief, and any disputed obligations of any nature, in law or equity, whether now known or unknown, and whether or not such claim is liquidated, or contingent, that has or have accrued or that arise or arises out of acts or omissions occurring between the beginning of time and the Effective Date and that arises out of or relates to the issues associated with any claim that either Party may have in connection with the matters raised in the Complaint Proceeding, including but not limited to claims for property damage, for damage to business or reputation, for nonpayment of recurring or nonrecurring charges for using of wires and other property, and for Cox's inspection and remediation of Qwest-owned facilities conducted as part of the Complaint Proceeding. The Parties intend that this Release will release each Party from any and all claims associated with the matters raised in the Complaint Proceeding, including any and all damages claims, claims for injunctive relief, or any other claims that either Party could have pursued before any court or tribunal relating to the

issues that are the subject of the Complaint Proceeding. All such released claims described herein shall hereafter be referred to as the "Released Claims."

5.2 It is expressly understood and agreed that the foregoing mutual release does not affect, release, alter, cancel, terminate or apply to products, services, orders, contracts, transactions, debts or, obligations that do not either arise out of or relate to the Complaint Proceeding. The Parties expressly acknowledge that they may have claims against one another that are not affected by this mutual release.

5.3 Each Party agrees to take all necessary actions to ensure that no other person within its direct or indirect control shall assert or commence any action, proceeding or claim of any kind in any court or agency or before any arbitral or other tribunal in respect of any Released Claims or to encourage, assist or cooperate with any person pursuing or asserting any Released Claims.

6. **Confidentiality.** The Parties agree to keep the monetary terms of this Agreement confidential as between the Parties and not to disclose the monetary terms of this Agreement to any unaffiliated third parties except as specifically set forth in Paragraph 7 below.

7. **Submission of this Agreement to ACC.** Within seven days of the last date of execution below, the Parties will, for informational purposes: (i) publicly file with the ACC a redacted copy of this Agreement that redacts the monetary terms of this Agreement, and (ii) file a Confidential, un-redacted copy of this Agreement with the ACC pursuant to the Protective Order issued June 18, 2007 so as to preclude public disclosure of the un-redacted copy of this Agreement.

8. **Effective Date.** The Effective Date of this Agreement is the date on which the Complaint Proceeding is dismissed with prejudice. As set forth in Paragraph 3 above, such dismissal date cannot occur until after the Amendment (as defined in Paragraph 1.1 of the

Subloop Arbitration Settlement Agreement) becomes effective pursuant to A.A.C. R14-2-1508. This Agreement is contingent on the ACC not making any material modifications to the terms of this Agreement or the terms of the Amendment (as defined in Paragraph 1.1 of the Subloop Arbitration Settlement Agreement).

9. **Governing Law.** This Agreement is governed by the law of the State of Arizona without regard to its conflict of law principles.

10. **No Admission of Liability.** This Agreement represents the Parties' mutual desire to compromise and settle disputed claims in a manner consistent with the public interest. The Agreement represents a compromise of the positions of the Parties. Neither the execution nor the performance of this Agreement shall constitute or be construed as an admission by either Party of any liability to the other, which the Parties expressly disclaim.

11. **Entire Agreement.** This Agreement is intended by the Parties to be the complete and final expression of their agreements as to the matters addressed within it and is specifically intended to be an integrated contract with respect to the matters affected by it. Each Party agrees that any prior negotiations, statements, representations or agreements that are inconsistent with any provision in this Agreement are merged in and superseded by this Agreement, and that such Party has not relied on any representation or promise, oral or otherwise, which is not set forth in this Agreement.

12. **Modification or Waiver.** No modification, course of conduct, amendment, supplement to, or waiver of this Agreement shall be binding upon the Parties unless made in writing and duly signed by all Parties. At no time shall any failure or delay by either Party in enforcing any provisions, exercising any option, or requiring performance of any provisions be construed to be a waiver of same. No effective waiver of any right conferred by this Agreement shall be construed to be a waiver of any other right.

13. Cooperation in Implementation. The Parties agree to execute any and all documents reasonably necessary to implement the terms and conditions of this Agreement. Each Party will support and defend this Agreement and shall oppose any modification of it.

14. Interpretation. The Parties acknowledge and agree that this Agreement is the result of negotiations between them, which have been conducted at arms' length by commercial entities of substantially equal bargaining power, that each Party has participated in the preparation of this Agreement with advice of counsel, and accordingly that this Agreement shall not be interpreted for or against either Party as being the drafter.

15. Dispute Resolution. Any controversy or claim arising out of or related to this Agreement, or its breach, shall be resolved in accordance with the dispute resolution provisions of the interconnection agreement then in effect between the Parties. The Parties authorize the ACC to enforce this Agreement and to order appropriate relief, including all necessary injunctive and legal remedies.

16. Counterparts. This Agreement may be executed in identical counterparts. Each counterpart shall be deemed to be an original instrument, but all counterparts taken together shall constitute a single document. Facsimile signatures shall be deemed originals.

17. Effect and Authority.

17.1 This Agreement shall be binding upon, and inure to the benefit of, the predecessors, successors, assigns, representatives, and beneficiaries of the Parties. This Agreement is intended to and does inure to the benefit of each Party and each Party's affiliated corporations and other related business entities, including, without limitation, parent corporations, subsidiaries, and divisions, and any of their officers, directors, agents, employees, representatives, shareholders, accountants, independent contractors, and attorneys.

17.2 Each Party represents and warrants to the other that: (a) it has the right to enter into this Agreement and to fully perform and fulfill the obligations and requirements for each transaction contemplated thereby; and (b) neither the performance of its services, its consummation of any transactions, nor its fulfillment of any obligations under this Agreement is in conflict with or violates the rights of any third party, or any legal obligation, law or regulation or any other agreements or obligations by which it is or may be bound.

IN WITNESS WHEREOF, the Parties have caused, for and on their behalf and intending to be legally bound hereby, the signatures of their respective duly authorized representatives to be hereunto affixed on the day and year indicated below.

QWEST CORPORATION

By: _____

Printed: Steven Hansen

Title: VP - Wholesale

Date: October 12, 2007

COX ARIZONA TELCOM, L.L.C.

By: _____

Printed: _____

Title: VP - Region Mgr

Date: October 18, 2007

Subloop Unbundling and Network Interface Device (NID) Amendment to the Interconnection Agreement between Qwest Corporation and Cox Arizona Telcom, LLC for the State of Arizona

This is an Amendment ("Amendment") to the Interconnection Agreement between Qwest Corporation (f/k/a U S WEST Communications, Inc.) ("Qwest"), a Colorado corporation, and Cox Arizona Telcom, LLC ("CLEC"), a Delaware Limited Liability Company; (collectively, "the Parties").

RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement, for service in the State of Arizona, that was approved by the Arizona Corporation Commission on July 2, 1997, as referenced in Docket Nos. U-3242-97-017, E-1051-97-017, Decision No. 60295 ("Interconnection Agreement"); and

WHEREAS, the Parties have entered into the "Settlement Agreement Concerning Subloop Arbitration Issues – Arizona" (the "Arbitration Settlement"); and

WHEREAS, the Arbitration Settlement contains agreements reflecting terms, conditions, and rates for Subloops and Network Interface Devices (NIDs); and

WHEREAS, in accordance with the Settlement Agreement, the Parties agree to amend the Interconnection Agreement under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amendment Terms

The Interconnection Agreement is hereby amended by adding the terms, conditions and rates for Subloop Unbundling and Network Interface Device (NID), as set forth in Attachment 1, and Exhibit A, attached hereto and incorporated herein.

Effective Date

This Amendment shall be deemed effective when approved, either by the Commission or by operation of law ("Effective Date").

Further Amendments

Except as modified herein, the provisions of the Interconnection Agreement shall remain in full force and effect. The provisions of this Amendment, including the provisions of this sentence, may

not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Entire Agreement

The Interconnection Agreement as amended (including the documents referred to herein) together with the Arbitration Settlement constitute the full and entire understanding and agreement between the Parties with regard to the subjects of the Interconnection Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Interconnection Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Cox Arizona Telcom, LLC

Signature

Claus Kroeger
Name Printed/Typed

SVP, Operations
Title

10/17/07
Date

Qwest Corporation

Signature

L. T. Christensen
Name Printed/Typed

Director – Interconnection Agreements
Title

10/12/07
Date

ATTACHMENT 1

9.3 Subloop Unbundling

INTRODUCTION

As part of the Parties' "Settlement Agreement Concerning Subloop Arbitration Issues – Arizona" (the "Arbitration Settlement"), CLEC and Qwest have resolved a dispute over CLEC's access to Qwest terminals for connecting CLEC's network to the individual wiring serving End User Customers at multi-tenant environments ("MTEs").

One aspect of the dispute involved the payment for CLEC's past access of Qwest terminals and Subloops. CLEC did not submit Subloop orders to Qwest in the past. Without the determination of ownership and the records that would likely have been created had CLEC submitted such orders, the Parties were compelled to exert their best efforts in determining the number of Subloops that had been used by CLEC and the period of time each Subloop was in use. These efforts led the Parties to agree upon an appropriate amount for CLEC to pay Qwest for CLEC's past use of Subloops, pursuant to the rates and charges in Qwest's standard agreement.

Another aspect of the overall resolution of this dispute involves CLEC's future access to Qwest's terminals and Subloops. In resolution of this aspect of the dispute, the Parties entered into the Arbitration Settlement in which, among other things, they agree to adhere to the provisions of these Sections 9.3-9.5 ("Subloop Section"), which are hereby incorporated by amendment to the current interconnection agreement entered into by the Parties ("Interconnection Agreement") to give effect to that part of the Arbitration Settlement. Accordingly, for the five-year period from the Effective Date, the terms and conditions of this Subloop Section shall remain in effect. The Parties agree to incorporate such terms and conditions into any subsequent interconnection agreement that they may enter into, and such terms and conditions so incorporated shall remain in effect until the termination of this five-year period.

Given the absence of records that would permit more precise projections, the Parties have exerted their best efforts to estimate the number of intrabuilding cable ("IBC") Subloops CLEC will use during this five-year period. As reflected in the Arbitration Settlement, CLEC has made an advance payment of $500,000 to reflect all rates and charges associated with the use of IBC Subloops during that period, including the recurring and non-recurring rates shown in Exhibit A. (This advance payment does not include (a) the cost for any special work that Qwest must perform in accordance with Section 9.3.3.7 below to relocate its facilities or replace inaccessible terminals, the charges for which will be billed separately pursuant to Sections 9.3.6.4.2 and 9.3.6.4.3 below, (b) new FCP/Cross Connect Collocation (including associated jumper charges), the charges for which will be billed separately pursuant Section 9.3.6.3, (c) new Distribution Subloops, the charges for which are described in Sections 9.3.2.1.1 and 9.3.2.1.2 and Exhibit A, (d) Subloop Isolation Charges, the charges for which will be billed separately pursuant to Section 9.3.6.1.2., (e) access to protector fields in Qwest NIDs as described in Sections 9.5.2.5 and 9.5.3.2 below, and (f) miscellaneous charges specified in Section 9.3.6.6) In consideration of such advance payment, CLEC will not be required to submit any order for a IBC Subloop or make any payment for a IBC Subloop during the five-year period. Further, in this and various other ways, the terms

and conditions of this Section 9.3 may differ from those contained in the interconnection agreements between Qwest and other Competitive Local Exchange Carriers. For example, CLEC and Qwest are not required by this Subloop Section to arrange a meeting in the field between their representatives for the purpose of creating any inventory.

9.3.1 Description

9.3.1.1 A "Subloop" is defined for this Subloop Section only as part or all of the distribution portion of a copper Loop or hybrid Loop that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (outside of the Central Office) and terminates at an End User's premises.

Subloops may include on-premise wiring owned or controlled by Qwest that terminates at the Demarcation Point. Qwest and CLEC recognize that, in the past, they have disagreed as to the location of the Demarcation Point for particular End User Customers at MTE premises. Accordingly, the Parties have agreed, for the limited purposes of this Subloop Section only, to forego any attempt to identify the actual Demarcation Point for a particular customer at an MTE premise, but instead to calculate payment based on the Parties' best estimate of the likely number of Subloops used by CLEC during the term of this Subloop Section. This Subloop Section is without waiver of either party to contest that the actual Demarcation Point is located elsewhere for any purpose other than Subloop ordering and billing associated under this Subloop Section.

An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, terminal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). The placement of CLEC network equipment or the establishment of cross connect capability at a Qwest FDI, SAI or Remote Terminal will require the use of Field Connection Point (FCP)/Cross Connect Collocation. In addition, CLEC may request Remote Collocation. CLEC shall not have access on an unbundled basis to a feeder Subloop, defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or MTE. CLEC shall have access to the feeder facilities only to the extent they are part of a complete transmission path, not a Subloop, between the Central Office and the End User Customer's premises or an MTE. This section does not address Unbundled Dark Fiber MTE Subloop.

9.3.1.1.1 "Attached Terminals" means accessible terminals that are (a) within the MTE building for access to End User Customers within that building, (b) within an MTE building in a campus environment for access to End User Customers in other MTE buildings within the same campus environment, or (c) physically attached outside or within close proximity to (i) the MTE building for access to End User Customers within that building or (ii) an MTE building in a campus environment for access to End User Customers in other MTE buildings within the same campus environment.

On a case by case basis and upon CLEC request, Qwest and CLEC will meet and, will jointly determine whether an accessible terminal is "within close proximity" to an MTE building and contains the functionality and accessibility of an Attached Terminal. If Qwest and CLEC are unable to agree upon whether a terminal is within close proximity, they shall use the Dispute Resolution process defined in the Interconnection Agreement. Qwest equipment located on real property that constitutes a campus environment, yet are not within close proximity or physically attached to a non-Qwest owned building, are not considered Attached Terminals.

9.3.1.1.2 "Detached Terminals" means all accessible terminals other than Attached Terminals.

9.3.1.1.3 For any configuration not specifically addressed in this Subloop Section, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross connect devices, (3) the interval applicable to any Collocation or other provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other Competitive Local Exchange Carriers, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by Competitive Local Exchange Carriers for Subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all Carriers' facilities.

9.3.1.1.4 CLEC may request, under any procedure provided for by the Interconnection Agreement for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters.

9.3.1.1.5 Prior to the development of such standard terms and conditions, Qwest shall impose in the six (6) areas identified in Section 9.3.1.1.3 above, only those requirements or intervals that are reasonably necessary, and shall make its determinations within ten (10) business days and shall apprise CLEC of the conditions for access. If there is a dispute regarding the conditions for access, Qwest shall attempt to accommodate access pending resolution of the specific issues in dispute.

9.3.1.2 Standard Subloops available

a) 2-Wire Analog and 2-Wire Non-loaded Distribution Subloop
b) 4-Wire Analog and 4-Wire Non-loaded Distribution Subloop
c) Intrabuilding cable ("IBC") Subloop from an Attached Terminal
d) Campus Wire Subloop from a Detached Terminal

9.3.1.3 Standard Subloop Access

9.3.1.3.1 Accessing Subloops in Detached Terminals: Subloop unbundling (including Campus Wire) is available after a CLEC-requested FCP/Cross Connect Collocation has been installed within or adjacent to the Qwest accessible terminal as described in Section 9.3.1.4. The FCP/Cross Connect Collocation is a Demarcation Point between CLEC and Qwest's network where Qwest connects to a terminal block from which Cross Connections are run to Qwest Subloops. CLEC must order individual customer connections to End User Customers served via the FCP/Cross Connect Collocation. Qwest will, for each order, dispatch a technician to make the requested connection. The Parties will work together to coordinate the dispatch of their respective technicians to minimize disruption of the End User Customer's service.

9.3.1.3.2 Accessing Subloops in Attached Terminals: Where a cross connect field exists at an Attached Terminal, CLEC may directly access IBC without Qwest involvement. Where no cross connect field exists, CLEC will notify Qwest in accordance with Section 9.3.3 below. If the absence of a cross connect field is caused by the fact that the terminal is "hard-wired" (i.e., screw posts attached to the over-voltage protector), CLEC will construct a dual provider unit (DPU) on which to terminate its jumpers and on which to reterminate the Subloops at that terminal. If the absence of a cross connect field is caused by some other factor, and Qwest owns the wire running from the terminal to the End User Customer's premises, Qwest will construct a single POI that is suitable for use by multiple carriers unless CLEC requests a single point of access in a specific location, in which case Qwest will construct a single point of access and bill CLEC for the construction charge as defined in Exhibit A at 9.3.5.3 MTE-POI – Construction of new SPOI. Until Qwest constructs such cross connect field, CLEC may make a temporary connection to provide access to the End User Customer, according to the terms of the MTE Access Protocol. Such temporary connection shall serve as the MTE-POI, as that term is defined below, until such single POI or such single point of access is constructed.

9.3.1.4 Field Connection Point (FCP)

9.3.1.4.1 FCP/Cross Connect Collocation is an interface used with Detached Terminals that allows CLEC to access Subloops, where it is Technically Feasible, outside of the Central Office location. The FCP/Cross Connect Collocation permits connection of CLEC facilities to a terminal block within the accessible terminal. The terminal block allows a Qwest technician to access and connect Subloops to CLEC-provided cable terminations. When an FCP/Cross Connect Collocation is required, it must be in place before Subloops are accessed by CLEC. See Section 9.3.1.3.1 for processes for establishing individual End User Customer connections via an FCP/Cross Connect Collocation.

9.3.1.4.2 Placement of an FCP within a Qwest Premises for the sole purpose of creating a cross connect field to support Subloop unbundling constitutes an "FCP/Cross Connect Collocation."

9.3.1.4.2.1 The terms, conditions, and intervals for FCP/Cross Connect Collocation are found within Section 9.3. Rates for FCP/Cross Connect Collocation are found in Exhibit A.

9.3.1.4.2.2 To the extent that CLEC places equipment in a Qwest Premises that requires power and or heat dissipation, such Collocation is governed by the terms of Section 8 and does not constitute an FCP/Cross Connect Collocation.

9.3.1.4.3 An FCP/Cross Connect Collocation arrangement can be established either, at CLEC's option, within a Qwest accessible terminal, or, if space within the accessible terminal is legitimately exhausted and when Technically Feasible, CLEC may place the FCP/Cross Connect Collocation in an adjacent terminal. CLEC will have access to the equipment placed within the FCP/Cross Connect Collocation for maintenance purposes. However, CLEC will not have access to the FCP Interconnection point.

9.3.1.5 MTE Point of Interconnection (MTE-POI)

9.3.1.5.1 MTE-POI is the interface between CLEC's and Qwest's facilities at an MTE. An MTE-POI is necessary when CLEC is accessing IBC Subloop from an Attached Terminal. Where a cross connect field exists, it shall serve as the MTE-POI; where no cross connect field exists, either a single POI that is suitable for use by multiple carriers or a new single point of access as requested by CLEC will be constructed in accordance with Section 9.3.1.3.2, and such point of access shall become the MTE-POI. FCP/Cross Connect Collocation is not required for IBC Subloops accessed from an MTE-POI at an Attached Terminal under this Section 9.3.1.5. All End User Customer connections will terminate at the MTE-POI, and once established, the MTE-POI will be used as the cross connect facility for all End User Customers at that terminal.

9.3.1.6 Technical Feasibility and Best Practices

9.3.1.6.1 If Parties are unable to reach agreement through voluntary negotiations as to whether it is Technically Feasible, or whether sufficient space is available, to unbundle a copper Subloop or Subloop for access to MTE wiring at the point where CLEC requests, Qwest shall have the burden of demonstrating to the Commission, in state proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not Technically Feasible to unbundle the Subloop at the point requested.

9.3.1.6.2 Once one state commission has determined that it is Technically Feasible to unbundle Subloops at a designated point, Qwest shall have the burden of demonstrating to the Commission, in state proceedings under section 252 of the Act, that it is not Technically Feasible, or that sufficient space is not available, to unbundle its own Subloops at such a point.

9.3.2 Standard Subloops Available

9.3.2.1 Distribution Subloops

9.3.2.1.1 Two-Wire/Four-Wire Unbundled Distribution Subloop: a Qwest-provided facility from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID). The Two-Wire/Four-Wire Unbundled Distribution Loop is suitable for local exchange-type services. CLEC may obtain access to this Unbundled Network Element at any Technically Feasible accessible terminal.

9.3.2.1.2 Two-Wire/Four-Wire Non-Loaded Distribution Subloop: a Qwest-provided facility without load coils and excess Bridged Taps from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID). When CLEC requests a Non-Loaded Unbundled Distribution Subloop and there are none available, Qwest will contact CLEC to determine if CLEC wishes to have Qwest unload a Subloop. If the response is affirmative, Qwest will dispatch a technician to "condition" the Distribution Subloop by removing load coils and excess Bridged Taps (i.e., "unload" the Subloop). CLEC may be charged the cable unloading and Bridged Taps removal nonrecurring charge in addition to the Unbundled Loop installation nonrecurring charge. If a Qwest technician is dispatched and no load coils or Bridged Taps are removed, the nonrecurring conditioning charge will not apply. CLEC may obtain access to this Unbundled Network Element at any Technically Feasible accessible terminal.

9.3.2.1.3 IBC Subloop from an Attached Terminal: a Qwest-provided facility from an Attached Terminal to the Network Interface Device (NID).

9.3.2.1.4 Campus Wire Subloop from a Detached Terminal in a Campus Environment: A Campus Wire is part of the distribution loop. A campus environment is one piece of property, owned by one (1) Person or entity, on which there are multiple buildings. If CLEC accesses a Subloop in a campus environment from an Attached Terminal, the wire is treated as IBC Subloop. If CLEC accesses a Subloop in a campus environment from a Detached Terminal, CLEC may access the Campus Wire Subloop pursuant to either Section 9.3.2.1.1 or 9.3.2.1.2. In these cases, an FCP/Cross Connect Collocation is required.

9.3.3 Attached Terminals: IBC Subloop Access Terms and Conditions

9.3.3.1 Neither Collocation nor an FCP/Cross Connect Collocation is required to access IBC Subloops used to access the network infrastructure within an MTE from an Attached Terminal. If CLEC requires the placement of equipment in Qwest Premises consistent with Section 9.3.4.1, the Subloop will be from a Detached Terminal and FCP/Cross Connect Collocation will be required. FCP/Cross Connect Collocation, as defined in Section 9.3.4.3, refers

to creation of a cross connect field and does not constitute Collocation as defined in the Interconnection Agreement. The terms and conditions of Collocation section do not apply to FCP/Cross Connect Collocation if required at or near an MTE.

9.3.3.2 To obtain access to IBC Subloops at Attached Terminals and where a cross connect field does not exist, CLEC shall follow the "MTE-Access Ordering Process" set forth in the MTE-POI portion of the Product Catalog ("PCAT"). When completing this process, CLEC may request construction of a new single point of access or the rearrangement of an existing cross connect field, if necessary. The following charges shall apply according to the terms set forth in Exhibit A: either the MTE POI Construction of a New MTE-POI nonrecurring charge identified in Section 9.3.6.4.3 if a single point of access as requested by CLEC is sought, or the MTE-POI Rearrangement of Facilities nonrecurring charge identified in Section 9.3.6.4.2 for rearranging an existing cross connect field. However, where a cross connect field exists and no rearrangement is requested by CLEC, CLEC shall not be billed any charges for accessing Subloop, consistent with the agreement explained in the Introduction section above.

9.3.3.3 Where a cross connect field does not exist and CLEC requests the construction of a single point of access, the optimum point and method to establish such single point of access for providing access to IBC Subloops will be determined during the MTE Access Ordering Process. The Parties recognize a mutual obligation to maintain network integrity, reliability, and security. For purposes of this Section 9.3, a "cross-connect field" is defined as a point where CLEC can access the Qwest Subloop without otherwise connecting CLEC's network to the Qwest network. By way of illustration, cross connect fields include 66 Blocks, where CLEC can access the Subloop by removing the Qwest jumper and punching down on the 66 Block. "Cross-connect field" also includes 76 Blocks containing screw posts, where Cox can detach the Qwest jumper from the post and screw down its own connections. A "cross connect field" would not include a 76 Block where the screw posts were "hard-wired" to the Qwest over-voltage protector, however, as attachment to these posts would result in CLEC's use of the Qwest over-voltage protector.

9.3.3.3.1 Where a cross connect field does not exist, then CLEC will follow the processes set forth in Section 9.3.1.3.2. This shall include, for instances where Qwest will construct a single POI or a single point of access, contacting the Qwest account manager in order to schedule this work.

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9.3.3.4 CLEC will work with the building owner to determine where to terminate its facilities within the MTE. CLEC will be responsible for all work associated with bringing its facilities into and terminating the facilities in the terminal. CLEC shall seek to work with the building owner to create space for

such terminations without requiring Qwest to rearrange its facilities.

9.3.3.5 If there is space in the building for CLEC to enter the building and terminate its facilities without Qwest having to rearrange its facilities, CLEC must seek to use such space.

9.3.3.6 If CLEC connects Qwest's IBC Subloop element to CLEC's facilities using any temporary wiring or cut-over devices, CLEC shall remove any remaining temporary wiring or cut-over devices and install permanent wiring within ninety (90) Days. All wiring arrangements, temporary and permanent, must adhere to the National Electric Code and MTE Access Protocol.

9.3.3.7 If there is either: (a) insufficient space for CLEC to place its building terminal; or (b) no existing cross connect field from which CLEC can access such IBC Subloops, and Qwest and CLEC are unable to agree on the location of the single POI provided by Qwest; and if CLEC requests that Qwest do so, Qwest will either rearrange facilities to make room for CLEC or construct a single point of access as requested by CLEC. In such instances, CLEC must pay either the MTE-POI Rearrangement of Facilities or the MTE-POI Construction of New SPOI nonrecurring charge (as applicable), identified in Section 9.3.5 of Exhibit A, which will be ICB, based on the scope of the work required. If CLEC disputes Qwest's ICB charge, the Parties shall resolve such dispute pursuant to the Dispute Resolution terms of the Interconnection Agreement.

9.3.3.7.1 If Qwest must rearrange its terminations to make space for CLEC, Qwest shall have forty-five (45) Days from receipt of an MTE-POI Application as described in the MTE-POI PCAT to compete the installation. Qwest may seek an extended interval if the work cannot reasonably be completed within forty-five (45) Days. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.3.7.2 If Qwest is required to construct a new Detached Terminal that is fully accessible to and suitable for CLEC, the interval for completion will be negotiated between the Parties on an Individual Case Basis during the joint meet.

9.3.3.7.3 CLEC may cancel a request to construct an FCP/Cross Connect Collocation or single point of access as requested by CLEC under Section 9.3.3.7 prior to Qwest completing the work by submitting a cancellation request (as defined in the MTE-POI PCAT) to its Qwest account manager. CLEC shall be responsible for payment of all cancellation costs, including all costs previously incurred by Qwest as well as any costs necessary to restore the property to its original condition.

9.3.3.8 At no time will either Party rearrange the other Party's facilities within the cross connect field of the terminal or MTE-POI or otherwise tamper with or damage the other Party's facilities within the MTE-POI, except as necessary to place a DPU as described in section 9.3.1.3.2. This does not preclude normal rearrangement of wiring or jumpers necessary to connect IBC Subloop or Customer-owned inside wire ("Customer IW") to CLEC facilities in the manner described in the MTE Access Protocol. If such damage accidentally occurs, the Party responsible for the damage must immediately notify the other and will be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

9.3.4 Detached Terminal Subloop Access: Terms and Conditions

9.3.4.1 Access to Subloops at a Detached Terminal must be made through an FCP/Cross Connect Collocation. Remote Collocation will be required if CLEC's equipment requires power and/or heat dissipation.

9.3.4.2 To the extent that the accessible terminal does not have adequate capacity to house the network equipment or interface associated with the FCP, CLEC may opt to use Adjacent Collocation to the extent it is Technically Feasible. Such adjacent access shall comport with NEBS Level 1 safety standards. Alternatively, CLEC may establish a terminal pursuant to Section 9.3.4.3.1.

9.3.4.3 Field Connection Point (FCP)

9.3.4.3.1 Qwest is not required to build additional space for CLEC to access Subloop elements. When Technically Feasible, CLEC may construct its own structure adjacent to Qwest's Detached Terminal. CLEC shall obtain any necessary authorizations or rights of way required (which may include obtaining access to Qwest rights of way, pursuant to the Interconnection Agreement) and shall coordinate its facility placement with Qwest, when placing its facilities adjacent to Qwest facilities. Obstacles that CLEC may encounter from cities, counties, electric power companies, property owners and similar third parties, when it seeks to connect its equipment at Subloop access points, will be the responsibility of CLEC to resolve with the municipality, utility, property owner or other third party.

9.3.4.3.2 The optimum point and method to access Subloop elements will be determined during the Field Connection Point process. The Parties recognize a mutual obligation to maintain network integrity, reliability, and security.

9.3.4.3.3 CLEC must identify the size and type of cable that will be terminated in the Qwest FCP/Cross Connect Collocation location. Qwest will terminate the cable in the Qwest Detached Terminal if termination capacity is available. If termination capacity is not available, Qwest will expand the terminal or FDI at the request of CLEC if Technically Feasible,

all reconfiguration costs to be borne by CLEC. In this situation only, Qwest shall seek to obtain any necessary authorizations or rights of way required to expand the terminal. It will be the responsibility of Qwest to seek to resolve obstacles that Qwest may encounter from cities, counties, electric power companies, property owners and similar third parties. The time it takes for Qwest to obtain such authorizations or rights of way shall be excluded from the time Qwest is expected to provision the FCP/Cross Connect Collocation. CLEC will be responsible for placing the cable from the Qwest FCP/Cross Connect Collocation to its equipment. Qwest will perform all of the initial splicing at the FCP/Cross Connect Collocation.

9.3.4.3.4 CLEC may cancel an FCP/Cross Connect Collocation request prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest.

9.3.4.3.5 If the Parties are unable to reach an agreement on the design of the FCP/Cross Connect Collocation through the Field Connection Point Process, the Parties may utilize the Dispute Resolution process pursuant to the Dispute Resolution section of the Interconnection Agreement. Alternatively, CLEC may initiate a state proceeding under Section 252 of the Act, wherein Qwest shall have the burden to demonstrate that there is insufficient space in the Detached Terminal to accommodate the FCP/Cross Connect Collocation, or that the requested FCP/Cross Connect Collocation is not Technically Feasible.

9.3.4.4 Apart from the initial termination of wiring by Qwest provided for herein, at no time shall either Party rearrange the other Party's facilities within the Detached Terminal or otherwise tamper with or damage the other Party's facilities. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

9.3.5 Ordering/Provisioning

9.3.5.1 All Subloop Types

9.3.5.1.1 Where required by this Subloop Section, CLEC may order Subloop elements through the Operational Support Systems described in the Interconnection Agreement.

9.3.5.1.2 Qwest shall provide CLEC (including via its public website), detailed ordering forms and process descriptions for each Subloop, MTE-POI and FCP/Cross Connect Collocation described in this Subloop Section. CLEC shall identify Subloop elements by NC/NCI codes provided by Qwest in the appropriate technical publications. This information shall be kept confidential, and used by each Party, in accordance with Section 5.16 of the Interconnection Agreement.

9.3.5.2 Additional Terms for Detached Terminal Subloop Access

9.3.5.2.1 CLEC may only submit orders for Subloop elements after the FCP/Cross Connect Collocation is in place. The FCP/Cross Connect Collocation shall be ordered pursuant to Section 9.3.5.5. CLEC will populate the LSR with the termination inventory information provided to CLEC by Qwest at the completion of the FCP/Cross Connect Collocation process.

9.3.5.2.2 Qwest shall dispatch a technician to run a jumper between its Subloop elements and CLEC's facilities for FCP/Cross Connect Collocation only. CLEC shall not at any time disconnect Qwest facilities or attempt to run a jumper between its facilities and Qwest's Subloop elements without specific written authorization from Qwest.

9.3.5.2.3 Once the FCP/Cross Connect Collocation is in place, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.3 Intentionally Left Blank.

9.3.5.4 Additional Terms for MTE-POI Subloop Access - MTE-Access Ordering Process

9.3.5.4.1 In other interconnection agreements to which Qwest is a party, Section 9.3.5.4 addresses terms and conditions associated with ordering Qwest IBC Subloop, including methods by which Competitive Local Exchange Carriers inquired as to the location of the Demarcation Point and by which Qwest responded. In lieu of such terms and conditions, Qwest and CLEC have agreed to reasonably estimate the amount of Qwest IBC Subloops that CLEC intends to use over a five year period from the Effective Date, and CLEC has paid the associated recurring and nonrecurring charges for these IBC Subloops in advance (not including charges for (a) the cost for any special work that Qwest must perform in accordance with Section 9.3.3.7 below to relocate its facilities or replace inaccessible terminals, the charges for which will be billed separately pursuant to Sections 9.3.6.4.2 and 9.3.6.4.3 below, (b) new FCP/Cross Connect Collocation (including associated jumper charges), the charges for which will be billed separately pursuant Section 9.3.6.3, (c) new Distribution Subloops, the charges for which are described in Sections 9.3.2.1.1 and 9.3.2.1.2 and Exhibit A, (d) Subloop Isolation Charges, the charges for which will be billed separately pursuant to Section 9.3.6.1.2. and (e) miscellaneous charges specified in Section 9.3.6.6).

9.3.5.4.2 Where CLEC connects its network terminating equipment to Customer IW in the End User Customer's premises, the Parties agree that CLEC must isolate End User Customer from Qwest's network. Where wiring serving such End User

Customer connects to an Attached Terminal, CLEC will lift and tag such wiring at the customer side of the Attached Terminal. Where wiring serving such End User Customer connects to other than an Attached Terminal, CLEC will isolate Qwest's network at the first telephone jack in the End User Customer's premises and install a dual-provider jack replacing the existing first jack. In either case, if any such wiring is owned or controlled by Qwest, CLEC is not required to provide specific notice to Qwest, to order a Subloop, or to compensate Qwest for isolation of Qwest's network from the End User Customer.

9.3.5.4.3. When CLEC accesses an MTE-POI, it must employ generally accepted best installation practices in accordance with industry standards. When CLEC accesses Subloops, it must adhere to the MTE Access Protocol unless the Parties have negotiated a separate document for such Subloop access. If CLEC requests access that is different from the MTE Access Protocol, Qwest will negotiate with CLEC promptly and in good faith toward that end. Qwest will not make any changes to the MTE Access Protocol other than through the Change Management Process.

9.3.5.4.4 through 9.3.5.4.7 Intentionally left blank.

9.3.5.5 FCP/Cross Connect Collocation Ordering Process

9.3.5.5.1 CLEC shall submit a Field Connection Point (FCP)/Cross Connect Collocation Request Form to Qwest. When Collocation is needed, CLEC shall also submit a Collocation Application, when required. The FCP Request Form shall be completed in its entirety.

9.3.5.5.2 After construction of the FCP/Cross Connect Collocation, and any needed Collocation, are complete, CLEC will be notified of its termination location, which will be used for ordering Subloops.

9.3.5.5.2.1 The following constitute the intervals for provisioning FCP/Cross Connect Collocation and any associated Collocation that is needed, which intervals shall begin upon completion of the FCP/Cross Connect Collocation Request Form and, if required, its associated Collocation Application, in their entirety:

9.3.5.5.2.1.1 Any Remote Collocation associated with an FCP/Cross Connect Collocation in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the intervals set forth in the Interconnection Agreement.

9.3.5.5.2.1.2 An FCP/Cross Connect Collocation in a Detached Terminal shall be provisioned within ninety (90)

Days from receipt of a written request by CLEC.

9.3.5.5.2.1.3 If Qwest denies a request for FCP/Cross Connect Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to inspect the entire Premises escorted by Qwest personnel within ten (10) Days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed space plans (to the extent space plans exist) for the Premises with CLEC during the inspection, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the inspection of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original FCP/Cross Connect Collocation Application date for determining Ready For Service ("RFS") unless both Parties agree to a revised date.

9.3.5.5.2.1.4 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charge, Qwest will schedule with CLEC an inspection of the FCP/Cross Connect Collocation with CLEC if requested. Upon completion of the Acceptance inspection, CLEC will be provided the assignments and necessary ordering information. With prior arrangements, CLEC can request testing of the FCP/Cross Connect Collocation at the time of the Acceptance inspection. If Qwest, despite its best efforts, including notification through the contact number on the FCP/Cross Connect Collocation Application, is unable to schedule the Acceptance inspection with CLEC within twenty-one (21) Days of the RFS, Qwest shall begin billing the applicable charges.

9.3.5.5.2.1.5 Qwest may seek extended intervals if the work cannot reasonably be completed within the set interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.6 Rate Elements

9.3.6.1 All Subloop Types

9.3.6.1.1 Subloop Recurring Charge - The Parties have agreed to an upfront payment that covers monthly recurring charges for Subloops specified in Exhibit A as explained in the Introduction section above.

9.3.6.1.2 Subloop Trouble Isolation Charge - CLEC will be charged a Trouble Isolation Charge pursuant to the OSS – Maintenance and Repair section of the Interconnection Agreement when trouble is reported but not found on the Qwest facility.

9.3.6.1.3 Subloop Non-Recurring Charge – The Parties have agreed to an upfront payment that covers nonrecurring charges for Subloops specified in Exhibit A as explained in the Introduction section above.

9.3.6.2 Intentionally Left Blank.

9.3.6.3 Additional rates for Detached Terminal Subloop Access:

9.3.6.3.1 FCP/Cross Connect Collocation Charge: CLEC shall pay the full nonrecurring charge for creation of the FCP/Cross Connect Collocation set forth in Exhibit A upon submission of the FCP/Cross Connect Collocation Request Form. The FCP/Cross Connect Collocation Request Form shall not be considered completed in its entirety until complete payment is submitted to Qwest.

9.3.6.3.2 Any Remote Collocation associated with an FCP/Cross Connect Collocation in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the rate elements set forth in the Collocation section of the Interconnection Agreement.

9.3.6.3.3 Subloop Nonrecurring Jumper Charge: CLEC will be charged a nonrecurring basic installation charge for Qwest running jumpers within the Detached Terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.4 Additional Rate Elements for MTE-POI Sub-Loop Access

9.3.6.4.1 CLEC will not be charged any non-recurring or one-time charge for the Qwest's Subloop MTE–POI Site Inventory activities, should Qwest choose to perform any inventory.

9.3.6.4.2 Where CLEC requests Qwest to rearrange MTE-POI facilities, CLEC will be charged the MTE-POI Rearrangement of Facilities nonrecurring charge per Exhibit A for Qwest to complete a rearrangement of facilities to make room for the termination of the CLEC's cables as requested by CLEC pursuant to Section 9.3.3.7.

9.3.6.4.3 Where CLEC requests Qwest to construct a single point of access as requested by CLEC, CLEC will be charged the MTE-POI Construction of New MTE-POI nonrecurring charge per Exhibit A for Qwest to construct such a single point of access pursuant to Section 9.3.3.7.

9.3.6.5 Nonrecurring charges per Exhibit A apply for conditioning for Distribution Subloop.

9.3.6.6 All miscellaneous services as described in Section 9.20 are available with Subloop. Miscellaneous charges per Exhibit A apply for miscellaneous services.

9.3.7 Repair and Maintenance

9.3.7.1 Detached Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the accessible terminal and the FCP/Cross Connect Collocation, and CLEC will maintain all of its facilities and equipment installed by CLEC.

9.3.7.2 MTE-POI Subloop Access: Qwest will maintain all of its facilities and equipment in the MTE-POI, and CLEC will maintain all of its facilities and equipment in the MTE.

9.4 Intentionally Left Blank

9.5 Network Interface Device (NID)

9.5.1 Description

The Qwest NID is defined as any means of connecting Customer IW and Qwest's distribution plant, such as a cross connect device used for that purpose. If CLEC seeks to access a NID as well as a Subloop connected to that NID, it may do so only pursuant to the Subloop Section. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5. CLEC may connect its own network to Customer IW through Qwest's NID, or at any other Technically Feasible point. The NID carries with it all features, functions and capabilities of the facilities used to connect the Qwest distribution plant to the Customer IW, including access to the Cross Connect field, regardless of the particular design of the NID mechanism. Although the NID provides the connection to the Customer IW, it may not represent the Demarcation Point where Qwest ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the Customer IW against lightning and other high voltage surges and is capable of terminating media such as twisted pair cable. If CLEC orders Unbundled Loops or Subloops on a reuse basis, the existing drop and Qwest's NID, as well as any on premises wiring that Qwest owns or controls, will remain in place and continue to carry the signal over the Customer IW to the End User Customer's equipment. Notwithstanding the foregoing, an Unbundled Loop and any Subloop terminating at a

NID shall include the existing drop and the functionality of the NID as more specifically set forth in Section 9.2. The NID is offered in three (3) varieties:

9.5.1.1 Simple NID - The modular NID is divided into two (2) components, one containing the over-voltage unit (protector) and the other containing the Customer IW termination, and a modular plug which connects the Customer IW to the distribution plant or dial tone source. The non-modular NID is a protector block with the Customer IW terminated directly on the distribution facilities.

9.5.1.2 Smart NID – To the extent Qwest has deployed "smart" devices in general meaning a terminating device that permits the service provider to isolate the Loop or Subloop facility from the Customer IW for testing purposes, and such devices have spare functioning capacity not currently used by Qwest or any other provider, Qwest shall provide unbundled access to such devices. Qwest shall also continue to allow CLEC, at its option, to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future regardless of whether or not CLEC terminates its own distribution facility on the NID.

9.5.1.3 Multi-Tenant (MTE) NID - The MTE NID is divided into two (2) functional components: one containing the over-voltage unit (protector) and the other containing the terminations of the Customer IW. Such devices contain the protectors for, and may be located externally or internally to the premises served. CLEC may access Customer IW at the MTE-NID where the Customer IW terminates. Such access does not require notice to Qwest or ordering of any NID as a UNE.

9.5.2 Terms and Conditions

9.5.2.1 CLEC may use the existing Qwest NID to terminate its drop if space permits, otherwise a new NID or other Technically Feasible Interconnection point is required. If CLEC installs its own network interface equipment ("NIE"), CLEC may connect its NIE to the Qwest NID by placing a cross connect between the two. When Provisioning a NID-to-NIE connection, CLEC will isolate the Qwest facility in the NID by unplugging the modular unit. If CLEC requires that a non-modular unit be replaced with a modular NID, Qwest will perform the replacement for the charge described in Section 9.5.3.1. If CLEC is a facilities-based provider up to and including its NIE, the Qwest facility currently in place, including the NID, will remain in place.

9.5.2.1.1 CLEC may connect its facilities directly to the NID field containing the terminations of the Customer IW, without restriction. Such connection does not constitute use of Qwest's NID as a UNE and no notice or order is required by CLEC. Where Qwest does not own or control the on premises wiring, CLEC and the landowner shall determine procedures for such access.

9.5.2.1.2 CLEC may use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.

9.5.2.1.3 Pursuant to generally acceptable work practices, and provided the Customer IW re-termination is required to meet service requirements of either Party's End User Customer, either Party may remove the Customer IW from the NID and connect that wire to that Party's own NID or NIE. No recurring rate or nonrecurring charge shall apply to such a rearrangement of wiring. Future installation of Qwest NIDs will be such that it will not unnecessarily impede access to the Customer IW.

9.5.2.1.4 CLEC may enter the subscriber access chamber or End User Customer side of a dual chamber NID enclosure for the purpose of NID-to-NIE connections.

9.5.2.1.5 Upon CLEC request, Qwest will make other rearrangements to the Customer IW terminations or terminal enclosure. Charges will be assessed per Section 9.5.3.4. No such charge shall be applicable if Qwest initiates the rearrangement of such terminations. In all such instances, rearrangements shall be performed in a non-discriminatory fashion and timeframe and without an End User Customer's perceivable disruption in service. Qwest will not make any rearrangements of wiring that is provided by another Carrier that relocates the other Carrier's test access point without notifying the affected Carrier promptly after such rearrangement if CLEC has properly labeled its cross connect wires.

9.5.2.2 Qwest will retain sole ownership of the Qwest NID and its contents on Qwest's side. Qwest is not required to proactively conduct NID change-outs, on a wide scale basis. At CLEC's request, Qwest will change the NID on an individual request basis by CLEC and charges will be assessed per Section 9.5.3.5 except where Section 9.5.5.1 applies. Qwest is not required to inventory NID locations on behalf of CLEC.

9.5.2.3 When CLEC accesses a Qwest NID, it shall employ generally accepted best practices and comply with industry standards should such standards exist when it physically connects its facilities to the Qwest NID and makes Cross Connections necessary to provide service. Qwest shall label its terminals when a technician is dispatched.

9.5.2.4 All services fed through a protector field in a Qwest NID located inside a building will interface on an industry standard termination block and then extend, via a Cross Connection to the Customer IW. All services fed through a protector field in a Qwest NID that is attached to a building will interface on industry standard lugs or a binding post type of termination and then extend, via a Cross Connection, to the Customer IW.

9.5.2.5 If CLEC provides a request to Qwest, CLEC may connect its facilities directly to the protector field at Qwest NIDs that have unused protectors and are not used by Qwest or any other Telecommunications Carrier to provide service to the premises. If CLEC accesses the Qwest protector field, it shall do so on the distribution side of the protector field only where spare protector

capacity exists. In such cases, CLEC shall only access a Qwest NID protector field in cable increments appropriate to the NID. If twenty-five (25) or more metallic cable pairs are simultaneously terminated at the MTE NID, additions must be in increments of twenty-five (25) additional metallic pairs. In all cases, Telecommunications cables entering a Qwest NID must be terminated in compliance with FCC 88-57, section 315 of the National Electric Safety Code and section 800.30 of the National Electric Code.

9.5.3 Rate Elements

9.5.3.1 If CLEC requests the current simple NID to be replaced with a different simple NID, pursuant to Section 9.5.2.1, charges will be assessed on a time and materials basis with CLEC paying only for the portion of the change out that is specific to and for the functionality that supports CLEC requirements.

9.5.3.2 Recurring rates for unbundled access to the protector field in a Qwest NID are contained in Exhibit A of the Interconnection Agreement and apply pursuant to Section 9.5.2.5.

9.5.3.3 When CLEC requests that Qwest perform the work to connect its NIE to the Qwest NID, the costs associated with Qwest performing such work will be charged to CLEC on a time and materials basis.

9.5.3.4 Where Qwest makes Section 9.5.2.1.5 rearrangements to the Customer IW terminations or terminal enclosure on CLEC's request, pursuant to Section 9.5.2.1.5, charges will be assessed on a time and materials basis.

9.5.3.5 CLEC will be billed on a time and materials basis for any change out Qwest performs pursuant to Section 9.5.2.2. CLEC will be billed only for the portion of the change out that is specific to CLEC's request for additional capacity.

9.5.3.6 Where CLEC orders any Subloop, the rate charged for such Subloop will always be inclusive of the associated NID and no separate charge shall apply for such NID.

9.5.4 Ordering Process

9.5.4.1 Intentionally Left Blank.

9.5.4.2 CLEC may access an MTE NID after determining that the terminal in question is a NID, per the process identified in Section 9.3. If the terminal is a NID and CLEC wishes to access the End User Customer field of the NID, no additional verification is needed by Qwest. Such connection does not constitute use of Qwest's NID as a UNE and no notice or order is required by CLEC.

9.5.4.2.1 When CLEC seeks to connect to a NID cross connect field other than to the End User Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Qwest shall notify CLEC, within ten (10) business days, if the connection is not Technically Feasible. In such cases, Qwest shall inform CLEC of the basis for its claim of technical

infeasibility and, at the same time, identify all alternative points of connection that Qwest would support. CLEC shall have the option of employing the alternative terminal or disputing the claim of technical infeasibility pursuant to the Dispute Resolution provisions of the Interconnection Agreement. No additional verification is needed by Qwest and CLEC shall tag its jumper wire.

9.5.4.3 Subject to the terms of Section 9.5.4.2, CLEC may perform a NID-to-NID connection, according to Section 9.5.2.3, and access the End User Customer field of the NID without notice to Qwest. CLEC may access the protector field of the NID by submitting a LSR.

9.5.5 Maintenance and Repair

9.5.5.1 If Qwest is dispatched to an End User Customer's location on a maintenance issue and finds the NID to be defective, Qwest will replace the defective element or, if beyond repair, the entire device at no cost to CLEC. If the facilities and lines have been removed from the protector field or damaged by CLEC, CLEC will be responsible for all costs associated with returning the facilities and lines back to their original state. Charges for this work will be on a time and materials basis and billed directly to CLEC. However, CLEC will not be charged for any maintenance or repair work performed by Qwest when a technician is dispatched solely in connection with an End User Customer's election to subscribe to Qwest's services. Billing disputes will be resolved in accordance with the Dispute Resolution process contained in the Interconnection Agreement. Maintenance and Repair processes are contained in the Access to OSS Section of the Interconnection Agreement.

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Amendment						Recurring	Recurring Per Mile	Non-Recurring	REC	RECPM	NRC	Notes
9.0	Unbundled Network Elements (UNEs)											
	9.3	Subloop										
		9.3.1	2-Wire Analog and Nonloaded Distribution Loop									
			9.3.1.1	First Loop								
				9.3.1.1.1	Installation			$20.86				A
				9.3.1.1.2	Disconnect			$20.07				A
			9.3.1.2	Each Additional								
				9.3.1.2.1	Installation			$20.86				A
				9.3.1.2.2	Disconnect			$20.07				A
			9.3.1.3	First & Each Additional 2-Wire Distribution Loop								
				9.3.1.3.1	Zone 1	$4.33			A			
				9.3.1.3.2	Zone 2	$9.39			A			
				9.3.1.3.3	Zone 3	$25.41			A			
		9.3.2	4-Wire Analog and Nonloaded Distribution Loop									
			9.3.2.1	First Loop								
				9.3.2.1.1	Installation			$56.77				A
				9.3.2.1.2	Disconnect			$34.77				A
			9.3.2.2	Each Additional								
				9.3.2.2.1	installation			$56.77				A
				9.3.2.2.2	Disconnect			$34.77				A
			9.3.2.3	First & Each Additional 4-Wire Distribution Loop								
				9.3.2.3.1	Zone 1	$5.63			A			
				9.3.2.3.2	Zone 2	$12.21			A			
				9.3.2.3.3	Zone 3	$33.03			A			
			9.3.2.4	4-Wire Disconnect at the FDI				$34.77				A
		9.3.3	Intra-Building Cable Loop, per Pair (First & Each Additional)						&			
			9.3.3.1	No Dispatch, First								&
			9.3.3.2	No Dispatch, Each Additional								&
			9.3.3.3	Intentionally Left Blank								
			9.3.3.4	Intentionally Left Blank								
			9.3.3.5	On Premises Wire / Campus Wire, per Pair					&			
		9.3.4	Intentionally Left Blank									
		9.3.5	MTE Terminal Subloop Access									
			9.3.5.1	Subloop MTE - POI Site Inventory, per Request								&
			9.3.5.2	MTE - POI Rearrangement of Facilities				ICB				3, 5
			9.3.5.3	MTE - POI Construction of New SPOI	ICB				3, 5			
		9.3.6	Intentionally Left Blank									
		9.3.7	Field Connection Point (FCP)									
			9.3.7.1	Feasibility Fee / Quote Preparation Fee				$1,609.81				A
			9.3.7.2	FCP Set-up, per Request				$3,337.45				1
			9.3.7.3	FCP Splicing, per 25 Pairs				$14.07				1
			9.3.7.4	FCP Reclassification Charge				$589.35				1
		9.3.8	Intentionally Left Blank									
		9.3.9	2-Wire Loop Concentration									
			9.3.9.1	Zone 1		$3.09			A			
			9.3.9.2	Zone 2		$3.40			A			
			9.3.9.3	Zone 3		$5.15			A			
		9.3.10	4-Wire Loop Concentration									
			9.3.10.1	Zone 1		$4.02			A			
			9.3.10.2	Zone 2		$4.42			A			
			9.3.10.3	Zone 3		$6.70			A			
	9.5	Network Interface Device (NID)						$38.68				A
		9.5.1	Zone 1			$0.60			8, A			
		9.5.2	Zone 2			$0.63			8, A			
		9.5.3	Zone 3			$0.64			8, A			
	9.20	Miscellaneous Charges										
		9.20.1	Additional Engineering, per Half Hour or fraction thereof									
			9.20.1.1	Additional Engineering - Basic				$31.28				A
			9.20.1.2	Additional Engineering - Overtime				$38.68				A
		9.20.2	Additional Labor Installation, per Half Hour or fraction thereof									
			9.20.2.1	Additional Labor Installation - Overtime				$8.89				A
			9.20.2.2	Additional Labor Installation - Premium				$17.78				A
		9.20.3	Additional Labor Other, per Half Hour or fraction thereof									
			9.20.3.1	Additional Labor Other - (Optional Testing) Basic				$27.26				A
			9.20.3.2	Additional Labor Other - (Optional Testing) Overtime				$36.41				A
			9.20.3.3	Additional Labor Other - (Optional Testing) Premium				$45.57				A
		9.20.4	Intentionally Left Blank									
		9.20.5	Intentionally Left Blank									
		9.20.6	Additional Cooperative Acceptance Testing, per Half Hour or fraction thereof									
			9.20.6.1	Additional Cooperative Acceptance Testing - Basic				$28.96				A
			9.20.6.2	Additional Cooperative Acceptance Testing - Overtime				$38.68				A
			9.20.6.3	Additional Cooperative Acceptance Testing - Premium				$48.40				A
		9.20.7	Nonscheduled Cooperative Testing, per Half Hour or fraction thereof									
			9.20.7.1	Nonscheduled Cooperative Testing - Basic				$28.96				A

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				Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
		9.20.7.2	Nonscheduled Cooperative Testing - Overtime			$38.68			A
		9.20.7.3	Nonscheduled Cooperative Testing - Premium			$48.40			A
	9.20.8	Nonscheduled Manual Testing, per Half Hour or fraction thereof							
		9.20.8.1	Nonscheduled Manual Testing - Basic			$28.96			A
		9.20.8.2	Nonscheduled Manual Testing - Overtime			$38.68			A
		9.20.8.3	Nonscheduled Manual Testing - Premium			$48.40			A
	9.20.9	Intentionally Left Blank							
	9.20.10	Intentionally Left Blank							
	9.20.11	Additional Dispatch, per Order				$83.10			A
	9.20.12	Intentionally Left Blank							
	9.20.13	Design Change, per Order				$72.79			A
	9.20.14	Expedite Charge, per Day Advanced (see rates in Qwest s Tariff FCC No. 1 Section 5)				$200.00			11
	9.20.15	Cancellation Charge				ICB			3, 5
	9.20.16	Maintenance of Service, per Half Hour or fraction thereof							
		9.20.16.1	Maintenance of Service - Basic			$27.26			A
		9.20.16.2	Maintenance of Service - Overtime			$36.41			A
		9.20.16.3	Maintenance of Service - Premium			$45.57			A
	9.20.17	Intentionally Left Blank							

S:

*	Unless otherwise indicated, all rates are pursuant to Arizona Corporation Commission Dockets listed below:
A	Cost Docket T-00000A-00-0194 Phase II Order No. 64922 Effective 6/12/02
1	Rate not addressed in Cost Docket (estimated TELRIC).
3	ICB, Individual Case Basis pricing.
5	Rates for this element will be proposed in Arizona Cost Docket Phase III and may not reflect what will be proposed in Phase III. There may be additional elements designated for Phase III beyond what are reflected here.
8	Qwest has not implemented the NID recurring charges but reserves the right to access such a charge in the future.
11	Market-based prices, All charges and increments shall be the same as the comparable charges and increments provided in Qwest FCC, Retail Tariffs, Catalogs, or Price Lists.
&	Pre payment of $500,000.00 has been made in lieu of any recurring and non-recurring charges.

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